The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. 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 email to *rule-comments@sec.gov.* Please include File Number SR–OCC–2013–806 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–OCC–2013–806. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method of submission. 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 change that are filed with the Commission, and all written communications relating to the proposed 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 Web site viewing and printing in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of OCC and on OCC's Web site at *http://www.optionsclearing.com/components/docs/legal/rules_and_bylaws/sr_occ_13_806.pdf.*

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–OCC–2013–806 and should be submitted on or before November 12, 2013.

V. Commission's Findings and Notice of No Objection

Section 806(e)(1)(G) of the Clearing Supervision Act provides that a designated financial market utility may implement a change if it has not received an objection from the Commission within 60 days of the later of (i) the date that the Commission receives notice of the proposed change or (ii) the date the Commission receives any further information it requests for consideration of the notice. A designated financial market utility may implement a proposed change in less than 60 days from the date of receipt of the notice of the change by the Commission, or the date the Commission receives any further information it requested, if the Commission notifies the designated financial market utility in writing that it does not object to the proposed change and authorizes the designated financial market utility to implement the proposed change on an earlier date, subject to any conditions imposed by the Commission.[7]

In its filing with the Commission, OCC requested that the Commission notify OCC that it has no objection to the change no later than October 3, 2013, which is one week before the October 10, 2013 effective date of the New Facility. OCC requested Commission action by this date to ensure that there is no period of time that OCC operates without a credit facility, given the importance of the borrowing capacity in connection with OCC's risk-management framework.

The Commission does not object to the proposed change. Ensuring that OCC has uninterrupted access to a credit facility will promote the safety and soundness of the broader financial system by providing OCC with an additional source of liquidity to meet its clearance and settlement obligations in the event of the failure of a clearing member, bank, or clearing organization doing business with OCC. Having access to a credit facility will help OCC minimize losses in the event of such a failure by allowing it to access funds on extremely short notice, and without having to liquidate assets at a time when market prices could be falling precipitously.

VI. Conclusion

Pursuant to Section 806(e)(1)(I) of the Clearing Supervision Act, the Commission does not object to the proposed change, and authorizes OCC to implement the change (SR–OCC–2013–806) as of the date of this Order.[8]

By the Commission.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–24550 Filed 10–21–13; 8:45 am]

BILLING CODE 8011–01–P

[7] 12 U.S.C. 5465(e)(1)(I).

[8] 12 U.S.C. 5465(e)(1)(I).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70619; File No. SR–FINRA–2013–027]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Granting Approval of a Proposed Rule Change Relating to Amendments to FINRA Rules 2360 and 4210 in Connection With OCC Cleared Over-the-Counter Options

October 7, 2013.

I. Introduction

On June 28, 2013, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to provide for the treatment of over-the-counter (''OTC'') options cleared by The Options Clearing Corporation (''OCC'') under FINRA's rules. The proposed rule change was published for comment in the **Federal Register** on July 9, 2013.[3] The Commission received one comment letter on the proposal.[4] This order approves the proposed rule change.

II. Description

On December 14, 2012, the Commission approved new rules established by OCC to clear and guarantee OTC options on the S&P 500 index.[5] FINRA seeks to amend FINRA Rules 2360 (Options) and 4210 (Margin Requirements) to provide for the application of existing FINRA rules to

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 69913 (July 2, 2013), 78 FR 41149 (''Notice'').

[4] *See* Letter to Elizabeth M. Murphy, Secretary, Commission, from Alessandro Cocco, Managing Director, J.P. Morgan Clearing Corporation, dated July 30, 2013 (''JP Morgan Clearing Letter'').

[5] *See* Securities Exchange Act Release No. 68434 (December 14, 2012), 77 FR 75243 (December 19, 2012) (Order Approving Proposed Rule Change, as Modified by Amendment No. 1 Thereto, and Notice of No Objection to Advance Notice, Modified by Amendment No. 1 Thereto, Relating to the Clearance and Settlement of Over-the-Counter Options) (''OCC Notice'').

OTC options cleared by the OCC (''OCC Cleared OTC Options''). FINRA notes that, at this time, the OCC has only been approved by the Commission to clear OTC options on the S&P 500 index.[6] However, FINRA states that the proposed rule change is intended to apply to any OCC Cleared OTC Option.[7]

A. Amendments to Rule 2360 (Options)

FINRA Rule 2360 covers, among other things, the definitions, position limits, exercise limits, reporting, suitability, and disclosure requirements related to options and options trading.[8] Under FINRA Rule 2360, options are generally classified as either standardized,[9] conventional,[10] or as a FLEX Equity Option.[11] FINRA states that, historically, all standardized options have been traded on an exchange, and all conventional options have traded OTC.[12] FINRA proposes to amend Rule 2360 to treat OCC Cleared OTC Options as conventional options for purposes of the rule.[13] FINRA states that FINRA Rule 2360 generally treats the categories of options (*i.e.,* standardized, conventional, FLEX Equity Options) the same, except in the case of position limits, reporting, and the delivery of disclosure documents.[14] FINRA believes that in these enumerated areas it is appropriate to treat OCC Cleared OTC Options as conventional options.[15] FINRA states that OCC Cleared OTC Options will otherwise be subject to the same sales practice and other requirements that apply to transactions in any category of options (including, among other requirements, suitability, approval of account opening and supervision).[16]

Specifically, FINRA proposes to amend Rule 2360 to define an ''OCC Cleared OTC Option'' as ''any put, call, straddle or other option or privilege that meets the definition of an 'option' under Rule 2360(a)(21) and is cleared by The [OCC], is entered into other than on or through the facilities of a national securities exchange, and is entered into exclusively by persons who are 'eligible contract participants' as defined in the Exchange Act.''[17] In addition, FINRA proposes to amend the definitions of ''conventional option'' and ''conventional index option'' to include OCC Cleared OTC Options,[18] and to amend the definitions of ''standardized equity option,'' ''standardized index option,'' and ''FLEX Equity Option'' to specifically exclude OCC Cleared OTC Options.[19] FINRA also proposes to amend the definition of ''expiration date'' to reflect that the expiration date of OCC Cleared OTC Options may be customized by the parties to the trade in accordance with the rules of the OCC, rather than fixed by the OCC's rules.[20]

In addition, FINRA proposes to amend Rule 2360 to provide that the Characteristics and Risks of Standardized Options, also known as the Options Disclosure Document (''ODD''), and the Special Statement for Uncovered Option Writers (''Special Written Statement''), as further described below, will not be required to be delivered to customers effecting transactions in OCC Cleared OTC Options, which is consistent with the treatment of conventional options under Rule 2360.[21]

Finally, FINRA proposes to make technical, non-substantive changes to FINRA Rule 2360 in order to renumber certain provisions to account for the proposed new rule text and to reflect FINRA Manual style convention.

1. Position Limits

FINRA Rule 2360(b)(3)(A) imposes position limits on the number of options contracts in each class on the same side of the market (*i.e.,* aggregating long calls and short puts, or long puts and short calls) that can be held or written by a member, a person associated with a member, a customer or a group of customers acting in concert.[22] In general, position limits for standardized equity options are determined according to a five-tiered system in which more actively traded stocks with larger public floats are subject to higher position limits.[23] FINRA Rule 2360 provides that the position limit established by the rules of an options exchange for a particular equity option is the applicable position limit for purposes of FINRA Rule 2360.[24]

In general, conventional equity options are subject to the same position limits as the standardized equity options overlying the same security.[25] In instances where the equity security is not subject to a standardized option, the applicable position limit for the conventional option is the lowest tier (25,000 contracts) unless the security is in an index designated by FINRA that meets the volume and float criteria specified by FINRA[26] or the member can otherwise demonstrate to FINRA's Market Regulation Department that the underlying security meets the standards for a higher position limit.[27]

[6] *See* Notice, *supra* note 3, at 41151. *See also* OCC Notice, *supra* note 5.

[7] *See* Notice, *supra* note 3, at 41151.

[8] *See* FINRA Rule 2360.

[9] *See* FINRA Rules 2360(a)(31) (defining ''standardized equity option'' as ''any equity options contract issued, or subject to issuance by, The [OCC] that is not a FLEX Equity Option'') and 2360(a)(32) (defining ''standardized index options'' as ''any options contract issued, or subject to issuance, by The [OCC] that is based upon an index'').

[10] *See* FINRA Rules 2360(a)(9) (defining ''conventional option'' as ''any option contract not issued, or subject to issuance, by The [OCC]'') and 2360(a)(8) (defining ''conventional index option'' as ''any options contract not issued, or subject to issuance, by The [OCC] that, as of the trade date, overlies a basket or index of securities that: (A) Underlies a standardized index option; or (B) Satisfies the following criteria: (i) The basket or index comprises 9 or more equity securities; (ii) No equity security comprises more than 30% of the equity security component of the basket's or index's weighting; and (iii) Each equity security comprising the basket or index: (a) Is a component security in either the Russell 3000 Index or the FTSE All-World Index Series; or (b) has (1) market capitalization of at least $75 million or, in the case of the lowest weighted component securities in the basket or index that in the aggregate account for no more than 10% of the weight of the index, $50 million; and (2) trading volume for each of the preceding six months of at least one million shares or, in the case of each of the lowest weighted component securities in the basket or index that in the aggregate account for no more than 10% of the weight of the index, 500,000 shares'').

[11] *See* FINRA Rule 2360(a)(16) (defining ''FLEX Equity Option'' as ''any options contract issued, or subject to issuance by, The [OCC] whereby the parties to the transaction have the ability to negotiate the terms of the contract consistent with the rules of the exchange on which the options contract is traded'').

[12] *See* Notice, *supra* note 3, at 41150. FLEX Equity Options are, by definition, traded on an exchange. *See supra* note 11.

[13] *See* Notice, *supra* note 3, at 41150.

[14] *See* Notice, *supra* note 3, at 41150. FINRA states that FINRA Rule 2360(b)(4) specifies exercise limits through incorporating by reference options position limits under the rule, and that the provision does not further differentiate by category of option. Accordingly, the treatment of an option with respect to its position limit is the same with respect to exercise limits. *See* Notice, *supra* note 3, at 41150, n. 7.

[15] *See* Notice, *supra* note 3, at 41152.

[16] *Id.*

[17] *See* proposed FINRA Rule 2360(a)(19).

[18] *See* proposed FINRA Rules 2360(a)(8) and (9).

[19] *See* proposed FINRA Rules 2360(a)(16), (32), and (33).

[20] *See* proposed FINRA Rule 2360(a)(14).

[21] *See* proposed FINRA Rules 2360(b)(11)(A)(i) and (ii) and 2360(b)(16)(D).

[22] *See* Notice, *supra* note 3, at 41150.

[23] *Id. See also* FINRA Rule 2360(b)(3)(A). The position limits for standardized and conventional options overlying specified exchange-traded funds are established in FINRA Rule 2360, Supplemental Material .03. *See* Notice, *supra* note 3, at41150, n.10.

[24] *See* Notice, *supra* note 3, at 41150. *See also* FINRA Rule 2360(b)(3)(A).

[25] *See* Notice, *supra* note 3, at 41150. *See also* FINRA Rule 2360(b)(3)(A)(viii). There are differences in the available equity option hedge exemptions for standardized options and conventional options. *See* Notice, *supra* note 3, at 41150, n.11. *See also* Rule 2360(b)(3)(A)(vii).

[26] *See e.g., Notice to Members* 07–03 (January 2007) (which provides that the FTSE All-World Index Series is a designated index for this purpose) and *Regulatory Notice* 13–20 (May 2013) (which provides that the NASDAQ Global Large Mid Cap Index is an additional designated index for this purpose).

[27] *See* Notice, *supra* note 3, at 41150. *See also* FINRA Rule 2360(b)(3)(A)(viii).

Conventional index options are not subject to position limits while standardized index options are subject to the position limit as specified on the exchange on which the option trades.[28] Position limits for FLEX Equity Options are governed by the rules of the exchange on which such options trade.[29]

Position limits for standardized equity options contracts of the put class and call class on the same side of the market overlying the same security are not aggregated with the conventional equity options contracts or FLEX Equity Options contracts overlying the same security on the same side of the market.[30]

FINRA proposes that OCC Cleared OTC Options be subject to the position limits applicable to conventional options.[31] FINRA states that OCC Cleared OTC Options are similar to FLEX Equity Options because they are cleared by the OCC, are non-uniform, and give investors the ability to designate certain terms of the option.[32] However, FINRA believes that OCC Cleared OTC Options are more analogous to conventional options, since they are not traded on an exchange.[33] FINRA also notes that that the counterparties to OCC Cleared OTC Options must be ''eligible contract participants'' as defined in the Act [34] and are thus more sophisticated investors likely to be aware of the risks of options trading.[35]

Accordingly, pursuant to the proposal, OCC Cleared OTC Options on an equity security will be subject to the position limit of the greater of (i) 25,000 contracts or (ii) any standardized equity options position limit for which the underlying security qualifies, and OCC Cleared OTC Options will not be aggregated with any standardized option counterpart.[36] OCC Cleared OTC Options on an index, consistent with the treatment of conventional index options, will not be subject to any position limits.

2. Reporting Obligations

FINRA Rule 2360(b)(5)(A)(i)(a) generally requires all members to report to FINRA with respect to each account that has established an aggregate position of 200 or more conventional option contracts (whether long or short) of the put class and the call class on the same side of the market covering the same underlying security or index.[37] Such reporting requirement with respect to positions in conventional index options, however, applies only to an option that is based on an index that underlies, or is substantially similar to an index that underlies, a standardized index option.[38] FINRA Rule 2330(b)(5)(A)(i)(b) generally requires only those members that are not members of the options exchange upon which the standardized options are listed to report to FINRA with respect to each account that has established an aggregate position of 200 or more conventional option contracts (whether long or short) of the put class and the call class on the same side of the market covering the same underlying security or index.[39] Because there is no comparable exchange regulatory regime that applies to members trading OCC Cleared OTC Options, FINRA believes that OCC Cleared OTC Options should be treated as conventional options so that all members must report positions of 200 or more contracts on the same side of the market covering the same underlying security or index to FINRA, as is the case for all conventional options.[40]

3. Disclosure Documents

FINRA Rule 2360(b)(11)(A)(1) requires members to deliver the ODD to customers at or prior to the time the customer's account is approved for trading options issued by the OCC, and thereafter to deliver to customers applicable amendments to the ODD.[41] The ODD describes standardized options and FLEX Equity Options, but does not address OTC options, and members are not required to deliver the ODD with respect to such options.[42] In addition, FINRA Rule 2360(b)(11)(A)(2) requires members to deliver the Special Written Statement, which describes the risks related to writing uncovered short options, to customers approved to write uncovered short options transactions.[43] Similar to the ODD delivery requirements, the requirement to deliver the Special Written Statement only applies to transactions in options issued by the OCC (historically listed options).[44]

Pursuant to the proposal, and consistent with the treatment of transactions in conventional options, FINRA members will not be required to deliver the ODD or Special Written Statement to customers that engage in transactions in OCC Cleared OTC Options.[45] FINRA states that it believes such delivery requirements are unnecessary because the counterparties to OCC Cleared OTC Options must be ''eligible contract participants'' as defined in the Act,[46] and thus, are more sophisticated investors who are likely to be aware of the risks associated with trading OTC options.[47]

B. Amendments to Rule 4210 (Margin Requirements)

FINRA Rules 4210(f)(2) and 4210(g) set forth the strategy-based margin and portfolio margin requirements for transactions in options.[48] FINRA states that, in general, the margin requirements for options listed on an exchange (*i.e.,* cleared and guaranteed by the OCC) are lower than the margin requirements for conventional options (*i.e.,* OTC options).[49] For the purposes of margin requirements, FINRA proposes to treat OCC Cleared OTC Options the same as other cleared and guaranteed options (historically ''listed options''), in light of the clearing and guaranteeing functions performed by the OCC.[50] FINRA notes that the proposed beneficial margin treatment for OCC Cleared OTC Options may only be applied by a member after the OTC

[28] *See* Notice, *supra* note 3, at 41150. *See also Notice to Members* 94–46 (June 1994) (relating to conventional index options) and FINRA Rule 2360(b)(3)(B) (relating to standardized index options).

[29] *See* Notice, *supra* note 3, at 41150. *See also* FINRA Rule 2360(b)(2).

[30] *See* Notice, *supra* note 3, at 41151. *See* also FINRA Rule 2360(b)(3)(A)(viii). Because conventional index options are not subject to any position limits, FINRA Rule 2360 does not address aggregation of conventional index options with standardized index options overlying the same index. *See* Notice, *supra* note 3, at 41151, n. 16.

[31] *See* Notice, *supra* note 3, at 41151.

[32] *Id.*

[33] *Id.*

[34] *See* 15 U.S.C. 78c(a)(65) which states that an ''eligible contract participant has the same meaning as in section 1a of the Commodity Exchange Act.'' The Commodity Exchange Act details the requirements for eligibility as an ''eligible contract participant'' which generally require a sufficient regulated status or a specified minimum amount of assets. *See* 7 U.S.C. 1(a)(18). *See also* the OCC By-Laws, Article XVII, Section 6(f)(iv) (requiring that where a transaction in an OCC Cleared OTC Option is effected for the account of a customer, the customer is an ''eligible contract participant''); and OCC Notice, *supra* note 5 at 75244.

[35] *See* Notice, *supra* note 3, at 41151.

[36] *Id.*

[37] *Id.*

[38] *Id. See also* FINRA Rule 2360(b)(5)(A)(i)(a).

[39] *See* Notice, *supra* note 3, at 41151.

[40] *Id.*

[41] *Id.*

[42] *See* Notice, *supra* note 3, at 41151–41152.

[43] *See* Notice, *supra* note 3, at 41152.

[44] *See* FINRA Rule 2360(b)(11)(A)(2). *See also* Notice, *supra* note 3, at 41152.

[45] *Id.*

[46] *See supra* note 34.

[47] *See* Notice, *supra* note 3, at 41152.

[48] *Id.*

[49] *Id. See also* FINRA Rules 4210(f)(2)(A)(xxiv) and 4210(g)(2)(A) for the definitions of ''listed'' and ''listed option,'' respectively, and FINRA Rules 4210(f)(2)(A)(xxvii) and 4210(g)(2)(H) for the definitions of ''OTC'' and ''unlisted derivative,'' respectively.

[50] *See* Notice, *supra* note 3, at 41152.

option has been accepted for clearing and is guaranteed by the OCC.[51]

FINRA proposes to amend certain existing definitions under FINRA Rule 4210 in order to provide for the same margin treatment for OCC Cleared OTC Options as other cleared and guaranteed options. Specifically, FINRA proposes to amend the definition of ''listed'' in Rule 4210(f)(2)(A)(xxiv) to include OCC Cleared OTC Options and to amend the definition of ''OTC'' in Rule 4210(f)(2)(A)(xxvii) to specifically exclude OCC Cleared OTC Options.[52] FINRA also proposes conforming amendments to Rule 4210(g)(2)(A) regarding portfolio margin requirements to provide that a ''listed option'' includes options issued and guaranteed by a registered clearing agency, including OCC Cleared OTC Options, and to Rule 4210(g)(2)(H) to provide that an ''unlisted derivative'' includes, among other things, an option that is neither traded on a national securities exchange, nor issued and guaranteed by a registered clearing agency, and shall not include an OCC Cleared OTC Option.[53]

III. Comment Letter

As previously noted, the Commission received one comment letter on the proposal.[54] The commenter expresses support for FINRA's proposal to treat OCC Cleared OTC Options the same as other cleared and guaranteed options under FINRA Rule 4210 governing margin requirements.[55] The commenter states that it concurs with FINRA's belief that the risk posed by OCC Cleared OTC Options is similar to that of other cleared and guaranteed options, and that it is, therefore, appropriate to afford OCC Cleared OTC Options the same margin treatment as listed options.[56]

IV. Discussion

After careful review of the proposed rule change and the comment letter received, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities association.[57] In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act,[58] which requires, among other things, that the rules of a national securities association be 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 facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission finds the proposed treatment of OCC Cleared OTC Options under FINRA Rule 2360 is consistent with the Act. FINRA represents that, other than with respect to the requirements relating to position limits, reporting, and the delivery of disclosure documents, OCC Cleared OTC Options will be subject to the same options sale practice and other requirements (such as account opening procedures and standards for supervision and suitability) as apply to all categories of options.[59] FINRA also notes that the proposed rule change fosters innovation in the market by accommodating a new product in OCC Cleared OTC Options while balancing the need to protect investors and the public interest by regulating such product in a rational regulatory framework.

As previously stated by the Commission, position limits are intended to prevent the establishment of options positions that can be used or might create incentives to manipulate or disrupt the underlying market so as to benefit the options position, are designed to minimize the potential for mini-manipulation and for corners or squeezes of the underlying market, and serve to reduce the possibility for disruption of the options market itself, especially in illiquid options classes.[60] FINRA states that its proposal for OCC Cleared OTC Options is consistent with the purposes of position limits highlighted above. Additionally, FINRA notes that it uses the options position information reported to it as part of its ongoing market surveillance operations and to support its monitoring efforts for any market manipulation or disruption related to the accumulation or disposition of large options positions, and that the information reported enables FINRA to identify large positions held or written by a member that could pose a financial risk to the member or its clearing firm.[61] As such, the Commission finds that FINRA's proposal to subject OCC Cleared OTC Options to the position limits and reporting requirements applicable to conventional options is consistent with the Act.

With respect to the delivery of disclosure documents, the Commission finds that it is consistent with the Act to treat transactions in OCC Cleared OTC Options consistent with conventional options and to not require delivery of the ODD or Special Written Statement to customers transacting in OCC Cleared OTC Options. As noted by FINRA, OTC options are not addressed in the ODD. Furthermore, the counterparties to transactions in OCC Cleared OTC Options must be ''eligible contract participants'' as defined in the Act and, therefore, are more sophisticated investors likely to be aware of the risks of options trading.[62]

Finally, the Commission finds the proposed margin treatment of OCC Cleared OTC Options under FINRA Rule 4120 is consistent with the Act. As noted by FINRA, the margin requirement for options listed on an exchange (and cleared and guaranteed by the OCC) generally is lower than the margin requirement for OTC options (not cleared or guaranteed by the OCC). As noted by FINRA, the reasons underlying the more favorable margin treatment for listed (and OCC cleared and guaranteed) options apply with equal force to OCC Cleared OTC Options because the clearing and guaranteeing functions performed by the OCC reduce the counterparty credit risk of these OTC options, likening them to the same level of risk as listed options.[63]

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[64] that the proposed rule change (SR–FINRA–2013–027) be, and hereby is, approved.

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[51] *Id.*

[52] *See* Notice, *supra* note 3, at 41153.

[53] *Id.*

[54] *See supra* note 4.

[55] *See* JP Morgan Clearing Letter, *supra* note 4, at 1.

[56] *Id.*

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

[58] 15 U.S.C. 78o–3(b)(6)

[59] *See supra* notes 14–16 and accompanying text.

[60] *See* Securities Exchange Act Release No. 40087 (June 12, 1998), 63 FR 33746, 33748 (June 19, 1998) (Order Granting Approval and Notice of Filing and Order Granting Accelerated Approval to Amendment No.1 and Amendment No. 2 to Proposed Rule Change Relating to an Amendment to the NASD's Options Position Limit Rule File No. SR–NASD–98–23).

[61] *See* Notice, *supra* note 3, at 41151.

[62] *See supra* note 34.

[63] The Commission notes that the sole comment letter received on the proposal supported FINRA's proposed margin treatment of OCC Cleared OTC Options and agreed with FINRA that the risks related to OCC Cleared OTC Options are similar to the risks related to listed options, and, thus, similar margin requirements would be appropriate. *See* JP Morgan Clearing Letter, *supra* note 4.

[64] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[65]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–24631 Filed 10–21–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70627; File No. SR–NASDAQ–2013–130]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt New Regulatory Fees Payable by Certain Listed Companies and Applicants

October 8, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1], and Rule 19b–4 [2] thereunder, notice is hereby given that on October 2, 2013, The NASDAQ Stock Market LLC (''NASDAQ'' 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 NASDAQ. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

NASDAQ is proposing to adopt new regulatory fees payable by certain listed companies and applicants.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaq.cchwallstreet.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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. 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

NASDAQ proposes to adopt new regulatory fees applicable to certain listed companies and applicants. Specifically, NASDAQ proposes to require that an acquisition company that completes a business combination pay a $15,000 substitution listing fee in connection with the acquisition transaction. In addition, NASDAQ proposes to require that an applicant that does not list within 12 months of submitting its application pay a $5,000 additional application fee each subsequent 12 month period that the application remains pending. NASDAQ also proposes to impose a $5,000 application fee on companies that transfer from the NASDAQ Global or Global Select Market to the NASDAQ Capital Market. Finally, NASDAQ proposes to impose a $5,000 review fee on companies that submit a plan to regain compliance with certain listing requirements.

Acquisition Companies

NASDAQ Rule IM–5101–2 provides rules for the listing of a company whose business plan is to complete one or more acquisitions. These companies are required to maintain most of the proceeds of their initial public offering in a deposit account until the company completes one or more acquisitions representing at least 80% of the value of the deposit account. In connection with each acquisition made during this period, the acquisition company must notify NASDAQ about the acquisition and NASDAQ staff must determine whether the combined company will meet the requirements for initial listing. In conducting this review, NASDAQ staff considers the quantitative requirements for listing and also reviews for any public interest concerns the new officers, directors and shareholders that will become associated with the listed company as a result of the transaction.

When NASDAQ initially adopted rules concerning the listing of acquisition companies it determined not to charge an entry fee when the company completes a business combination.[3] As a result, because the application review fee is a component of the entry fee, NASDAQ also does not collect an application fee in connection with its review of whether the acquisition company satisfies the initial listing standards.[4] However, while the acquisition company is already a listed company, there are significant changes in its business, management and ownership structure at the time of the acquisition, necessitating a review that is substantially similar to the review conducted for newly listing companies. NASDAQ staff spends considerable time on such reviews.

Accordingly, NASDAQ now proposes to include a business combination described in IM–5101–2 in the definition of ''Substitution Listing Events,'' and thus subject these transactions to the $15,000 fee imposed on a Subsitution [sic] Listing Event in Rules 5910(f) and 5920(e). NASDAQ believes that this is appropriate, as the business combination by an acquisition company is similar to other Substitution Listing Events for which a fee is charged, such as a technical change whereby the shareholders of the original company receive a share-for-share interest in a new company.

NASDAQ will implement this fee immediately. However, NASDAQ will not charge this fee in connection with its review of any transaction that was publicly announced in a press release or Form 8–K prior to October 15, 2013.

Additional Application Fee

NASDAQ Rules 5910(a) and 5920(a) impose application fees on companies listing on NASDAQ. These fees are designed to recoup a portion of the costs associated with NASDAQ's review of the company.

NASDAQ has observed that when a company lists a substantial period of time after it first submitted its applications, NASDAQ must complete additional reviews of the application prior to the listing. These additional reviews are substantially equivalent to the review for a newly applying company and include, for example, additional reviews of individuals associated with the company, staff monitoring of disclosures and public filings by the applicant while its application is pending, and often extensive discussions with the applicant. To offset the costs associated with the ongoing monitoring and additional reviews for companies whose application remains open for an extended period, NASDAQ proposes to

[65] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 57685 (April 18, 2008), 73 FR 22191 (April 24, 2008) (Notice of Filing for SR–NASDAQ–2008–013, proposing additional initial listing standards for Special Purpose Acquisition Vehicles) at footnote 9 (noting that companies would not be required to pay a new listing fee at the time of an acquisition transaction).

[4] *See* Rules 5910(a) and 5920(a).