

proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act.

5. Applicants request an order under section 17(b) of the Act exempting them from section 17(a) of the Act to the extent necessary to permit applicants to consummate the Reorganization. Applicants submit that the Reorganization satisfied the standards of section 17(b) of the Act. Applicants states that the Boards, including a majority of the Disinterested Trustees, have found that participation in the Reorganization is in the best interests of each Fund, and that the interests of the existing shareholders will not be diluted as a result of the Reorganization. In addition, applicants state that the Reorganization will be on the basis of net asset value.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42605; File No. SR-Amex-98-33]

### Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment Nos. 1 and 2 to the Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 3 to the Proposed Rule Change by the American Stock Exchange LLC Relating to Margin Requirements

March 31, 2000.

#### I. Introduction

On September 18, 1998, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> to allow specified Portfolio Depository Receipts ("PDRs")<sup>3</sup> or Index Fund Shares<sup>4</sup> to serve as cover for short

positions in options on specified indexes. On March 5, 1999, the Amex filed Amendment Nos. 1 and 2 to the proposal.<sup>5</sup> The proposed rule change and Amendment Nos. 1 and 2 were published for comment in the **Federal Register** on October 20, 1999.<sup>6</sup> On September 24, 1999, the Amex provided data regarding the correlation between several PDRs or Index Fund Shares and indexes.<sup>7</sup> On December 15, 1999, the Amex filed Amendment No. 3 to the proposal.<sup>8</sup> The Commission received no comments regarding the proposal. This order approves the proposed rule change, as amended.

#### II. Background and Description of the Proposal

In a letter dated February 1, 1993, the staff of the Board of Governors of the

the Investment Company Act of 1940, as amended, whose assets are a securities portfolio.

<sup>5</sup> See letter from Geraldine Brindisi, Vice President and Corporate Secretary, Amex, to Michael Walinskas, Deputy Associate Director, Office of Market Supervision, Commission, dated March 4, 1999 ("Amendment No. 1"); and letter from Michael Cavalier, Associate General Counsel, Legal and Regulatory Policy, Amex, to Michael A. Walinskas, Deputy Associate Director, Division of Market Regulation ("Division"), Commission, dated March 4, 1999 ("Amendment No. 2"). In Amendment No. 1, the Amex (1) provided requirements for calculating the margin for an existing position in PDRs or Index Fund Shares serving as cover for short index options; and (2) added Commentary .10 to Amex Rule 462(d)(2)(H) to specify the PDRs or Fund Shares that may serve as cover for short index options positions. Specifically, Commentary .10 provided that: (1) Positions in Standard & Poor's ("S&P") Depository Receipts ("SPDRs") shall be cover for positions in S&P 500 Index options; S&P 100 Index options, or Institutional Index options; (2) positions in S&P MidCap 400 Depository Receipts ("MidCap SPDRs") shall be cover for positions in S&P MidCap 400 Index options; (3) positions in DIAMONDS Trust Units ("DIAMONDS") shall be cover for positions in Dow Jones Industrial Index ("DJX") options or Major Market Index options; and (4) positions in Nasdaq-100 Shares shall be cover for positions in Nasdaq 100-Index options. Amendment No. 2 revised the caption for the notice provided with Amendment No. 1.

<sup>6</sup> See Securities Exchange Act Release No. 41999 (October 13, 1999), 64 FR 56545.

<sup>7</sup> See letter from Michael Cavalier, Associate General Counsel, Legal and Regulatory Policy, Amex, to Mandy Cohen, Special Counsel, Division, Commission, dated September 24, 1999.

<sup>8</sup> See letter from Michael Cavalier, Associate General Counsel, Legal and Regulatory Policy, Amex, to Yvonne Fraticelli, Special Counsel, Division, Commission, dated December 8, 1999 ("Amendment No. 3"). In Amendment No. 3, the Amex revised proposed Commentary .10 to provide that specified PDRs or Index Fund Shares may serve as cover only for options on the index that the PDR or Index Fund Share is designed to replicate. Specifically, Amendment No. 3 revised Commentary .10 to provide that: (1) Positions in SPDRs shall be cover for S&P 500 Index options; (2) positions in MidCap SPDRs shall be cover for S&P 400 Index options; (3) positions in DIAMONDS shall be cover for DJX options; and (4) positions in Nasdaq-100 Shares shall be cover for positions in Nasdaq-100 Index options. In addition, Amendment No. 3 requested permanent approval of the proposed changes.

Federal Reserve System ("Federal Reserve Board") indicated that it was compatible with Regulation T<sup>9</sup> for the Amex to treat positions in Standard & Poor's Depository Receipts ("SPDRs")<sup>10</sup> as "cover" for an Options Clearing Corporation ("OCC")—issued option on a broad-based stock index with at least 99% correlation with the S&P 500 Index.<sup>11</sup> Specifically, the 1993 Letter stated that the Amex may require no additional margin where one leg of a position consisted of SPDRs and the other leg was an OCC-issued index option on a broad-based stock index with at least 99% correlation with the S&P 500 Index.<sup>12</sup> According to the Amex, the Federal Reserve Board staff also indicated that MidCap SPDRs<sup>13</sup> could serve as cover for S&P MidCap 400 Index options.<sup>14</sup>

Federal Reserve Board amendments to Regulation T that became effective on June 1, 1997, modified or deleted certain margin requirements regarding options transactions in favor of rules to be adopted by the options exchanges, subject to approval by the Commission.<sup>15</sup> Because exchange rules, as approved by the Commission, rather than Regulation T, now govern matters such as permitted offsets and cover for short options positions, the Amex proposes to revise Amex Rule 462, "Minimum Margins," to incorporate into Amex Rule 462 the Federal Reserve Board staff positions regarding SPDRs and MidCap SPDRs. In addition, the Amex proposes to amend Amex Rule

<sup>9</sup> 12 CFR 220. The Federal Reserve Board issued Regulation T pursuant to Section 7(c) of the Act.

<sup>10</sup> SPDRs represent interests in a unit investment trust that holds a portfolio of stocks replicating the S&P 500 Index. See Securities Exchange Act Release No. 31591 (December 11, 1992), 57 FR 60253 (order approving File No. SR-Amex-92-18).

<sup>11</sup> See letter from Michael J. Schoenfeld, Senior Securities Regulation Analyst, Federal Reserve Board, to James M. McNeil, Chief Examiner, Amex, dated February 1, 1993 ("1993 Letter").

<sup>12</sup> See Letter, *supra* note 11.

<sup>13</sup> MidCap SPDRs represent interests in a unit investment trust that holds a portfolio of stocks replicating the S&P MidCap 400 Index. See Securities Exchange Act Release No. 35534 (March 24, 1995), 60 FR 16686 (order approving File No. SR-Amex-94-52).

<sup>14</sup> According to the Amex, the Federal Reserve Board staff confirmed this position in a telephone conversation between Michael J. Schoenfeld, Senior Securities Regulation Analyst, Federal Reserve Board, and James M. McNeil, Chief Examiner, Amex, on May 1, 1995. Conversation between Michael Cavalier, Associate General Counsel, Legal and Regulatory Policy, Amex, and Yvonne Fraticelli, Special Counsel, Division, Commission, on February 24, 2000.

<sup>15</sup> See Board of Governors of the Federal Reserve System Docket No. R-977 (April 24, 1996), 61 FR 20386 (permitting the adoption of margin requirements "deemed appropriate by the exchange that trades the option, subject to the approval of the Securities and Exchange Commission").

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> PDRs are shares in a unit investment trust registered under the Investment Company Act of 1940, as amended, whose assets are a securities portfolio.

<sup>4</sup> Index Fund Shares are shares in an open-end management investment company registered under

462 to allow DIAMONDS<sup>16</sup> to serve as cover for DJX options and to allow Nasdaq-100 Shares<sup>17</sup> to serve as cover for Nasdaq-100 Index options.

Specifically, the proposal amends Amex Rule 462(d)(2)(H) to provide that no margin need be required in respect of a call index option or a put index option carried in a short position where the same account carries a long position in the PDRs or Index Fund Shares specified in Commentary .10 to the rule, and the PDRs or Index Fund Shares serving as cover have a market value at least equal to the aggregate current index value<sup>18</sup> of the stocks underlying the index option contracts to be covered. Commentary .10 provides that: (1) Position in SPDRs shall be cover for position in S&P 500 Index options; (2) positions in MidCap SPDRs shall be cover for positions in S&P MidCap 400 Index options; (3) positions in DIAMONDS shall be cover for positions in DJX options; and (4) positions in Nasdaq-100 Shares shall be cover for positions in Nasdaq-100 Index options.<sup>19</sup>

In addition, the proposal states that in computing the margin on an existing position in PDRs or Index Fund Shares that covers a short index put or call, the

market value of the PDRs or Index Funds Shares to be used shall not be greater than the exercise price, in the case of a call, or less than the market value of the PDRs or Index Fund Shares, in the case of a put, and the required margin shall be increased by any unrealized loss on the short put security position.<sup>20</sup>

### III. Discussion

For the reasons discussed below, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange. In particular, the Commission finds that the proposal is consistent with the Section 6(b)(5)<sup>21</sup> requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.<sup>22</sup>

As noted above, the proposal will amend Amex Rule 462 to provide that no margin need be required for short call or put positions in specified index options when the account carrying the short index option position also holds a long position in specified corresponding PDRs or Index Fund Shares that have a market value at least equal to the aggregate current index value of the stocks underlying the index option contracts to be covered. Specifically, the proposal will allow positions in SPDRs to serve as cover for positions in S&P 500 Index options; positions in MidCap SPDRs to serve as cover for positions in MidCap 400 Index options; positions in DIAMONDS to serve as cover for positions in DJX options; and positions in Nasdaq-100 Shares to serve as cover for positions in Nasdaq-100 Index options.<sup>23</sup>

Thus, the proposal will allow long positions in specified PDRs or Index Fund Shares to cover short positions in options on the indexes that the PDRs or Index Fund Shares are designed to replicate. The values of the PDR or Index Fund Share and the index that the PDR or Index Fund Share is designed to replicate should move in tandem. In addition, the PDR or Index Fund Share serving as cover for an index option position must have a market value at least equal to the aggregate current index value of the stocks underlying the index option contracts to be covered.

Accordingly, the long PDR or Index Fund Share position service as cover for the short index option position should ensure that the index option writer would be able to deliver upon exercise the difference between the current index value and the exercise price of the option. Specifically, in an account that meets the requirements of the proposal, the amount earned from closing out the long PDR or Index Fund Share position would adequately cover the option writer's obligation upon exercise. Accordingly, the Commission believes that it is reasonable for the Amex to allow SPDRs, MidCap SPDRs, DIAMONDS, and Nasdaq-100 Shares to serve as cover for short positions in options on the indexes they are designed to replicate.

In addition, the Commission notes that the proposal incorporates into the Amex's rules the Federal Reserve Board staff's positions regarding SPDRs and MidCap SPDRs.<sup>24</sup> For the reasons discussed above, the Commission believes that it is reasonable for the Amex to incorporate the Federal Reserve Board staff's positions into its rules and to provide the same treatment for DIAMONDS serving as cover for DJX options and for Nasdaq-100 Shares serving as cover for Nasdaq-100 Index options.

The Commission also believes that it is reasonable for the proposal to provide that in computing the margin on an existing position in PDRs or Index Fund Shares to be used shall not be greater than the exercise price, in the case of a call, or less than the market value of the PDRs or Index Fund Shares, in the case of a put, and that the required margin shall be increased by any unrealized loss on the short put security position. The Commission believes that these requirements will help to ensure that the writer of an index put or call option that is covered by a long position in PDRs or Index Fund Shares would be able to meet its obligation upon exercise of the option. In addition, the Commission notes that the proposed margin requirement for PDRs or Index Fund Shares serving as cover for short index option positions is consistent with current Amex Rule 462(d)(2)(H)(iv),<sup>25</sup> which establishes the margin requirement for an existing security position carried against a short put or call.<sup>26</sup>

<sup>24</sup> See 1993 Letter, *supra* note 11, and note 14, *supra*.

<sup>25</sup> The proposal will renumber current Amex Rule 462(d)(2)(H)(iv) as Amex Rule 462(d)(2)(H)(v).

<sup>26</sup> Specially, current Amex Rule 462(d)(2)(H)(iv) provides that in computing margin on an existing net security position carried against a short put or short call, the current market price to be used shall

<sup>16</sup> DIAMONDS are units of beneficial interest in the DIAMONDS Trust, which holds a portfolio of stocks replicating the Dow Jones Industrial Average. See Securities Exchange Act Release No. 39525 (January 8, 1998), 63 FR 2438 (order approving File No. SR-Amex-97-29). In connection with the commencement of trading in DIAMONDS, the Amex requested confirmation from the Federal Reserve Board staff that margin treatment of DIAMONDS would be comparable to that for SPDRs under Regulation T. See letter from James M. McNeil, Chief Examiner, Amex, to Scott Holz, Senior Attorney, Legal Division, The Federal Reserve Board, dated December 3, 1997. In response, the Federal Reserve Board staff noted, among other things, that the amendments to Regulation T that became effective on June 1, 1997, provide that the margin requirement for listed options is the amount specified by the national securities exchange that trades the option. Thus, the Federal Reserve Board staff indicated that DIAMONDS could serve as cover for a short position in index options if the rules of the appropriate self-regulatory organization specified that DIAMONDS qualify for such treatment. See letter from Scott Holz, Senior Attorney, the Federal Reserve Board, to James M. McNeil, Chief Examiner, Amex, dated January 8, 1998.

<sup>17</sup> Nasdaq 100 shares are units of beneficial interest in the Nasdaq-100 Trust, a portfolio of stocks replicating the Nasdaq 100 Index. See Securities Exchange Act Release No. 41119 (February 26, 1999), 64 FR 11510 (order approving File No. SR-Amex-98-34).

<sup>18</sup> Under Amex Rule 900C, the "aggregate current index value" is the current index group value (*i.e.*, the current numerical index value of a stock index group multiplied by \$1.00) multiplied by the index multiplier (*i.e.* the number specified in a stock index option contract by which the market closing index group value is to be multiplied to arrive at the value required to be delivered upon valid exercise of the contract).

<sup>19</sup> See Amendment No. 3, *supra* note 8.

<sup>20</sup> See Amendment No. 3, *supra*, note 8.

<sup>21</sup> 15 U.S.C. 78f(b)(5).

<sup>22</sup> In approving this rule, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>23</sup> See Amendment No. 3, *supra* note 8.

The Commission notes that the current proposal applies solely to the PDRs or Index Fund Shares and the corresponding index options specified in the proposal. If the Amex intends to allow additional PDRs or Index Fund Shares to serve as cover for short positions in options on other indexes, the Amex must file a proposed rule change pursuant to Section 19(b)(1) of the Act and Rule 19b-4 thereunder to adopt the additional offsets.

The commission finds good cause for approving Amendment No. 3 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Specifically, Amendment No. 3 strengthens the proposal by clarifying the language of the proposed rule change and by providing that specified PDRs or Index Fund Shares may serve as cover for short positions in options on the index that the PDR or Index Fund Share is designed to replicate. Accordingly, the Commission believes that granting accelerated approval of Amendment No. 3 is appropriate and consistent with Sections 6(b)(5) and 10(b)(2) of the Act.<sup>27</sup>

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 3 including whether Amendment No. 3 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington DC 20549-0609. 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 at the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-Amex-98-33 and should be submitted by April 28, 2000.

not be greater than the exercise price in the case of a call or less than the current market price in the case of a put and the required margin shall be increased by an unrealized loss on the short security position.

<sup>27</sup> 15 U.S.C. 78f(b)(5) and 78s(b)(2).

#### V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>28</sup> that the proposed rule change (SR-Amex-98-33), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>29</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42596; File No. SR-CBOE-00-09]

#### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Extending for Six Months the Rapid Opening System ("ROS") Pilot Program

March 30, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 22, 2000, the Chicago Board Options Exchange, Inc. ("CBOE" 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 the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change.

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

The Exchange requests an extension through September 30, 2000, of a pilot program established in Exchange Rule 6.2A, which governs the operation of, and the eligibility to participate in, the Exchange's Rapid Opening System.<sup>3</sup> The text of the proposed rule change is available at the Office of the Secretary, the Exchange, and at the Commission.

<sup>28</sup> 15 U.S.C. 78s(b)(2).

<sup>29</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> The pilot program was first approved by the Commission effective February 9, 1999 through March 31, 2000. See Securities Exchange Act Release No. 41033 (February 9, 1999), 64 FR 8156 (February 18, 1999.)

#### 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 extend for six months the Rapid Opening System ("ROS") pilot program.<sup>4</sup> Before the implementation of ROS, a trading crowd on CBOE arrived at the opening price by manually progressing through series after series of an options class. Open trading for any of the class' series could not commence until all series in the class had undergone the process.<sup>5</sup> ROS allows the Exchange to automate the opening of its various option classes, thereby avoiding the lengthier opening rotations that can occur under circumstances when there is a large influx of orders entered before or during the opening rotation. As the opening occurs, fill reports on all participating orders are generated automatically, opening market quotes and last sales will be disseminated, and market-makers will receive notification of assigned trades. In addition, as part of the pilot, the Exchange has developed a manual procedure for incorporating orders currently not included on CBOE's Electronic Book, known as non-bookable orders,<sup>6</sup> into the opening process.<sup>7</sup>

The CBOE represents that its experience with ROS over the past year has been positive. Member firms have

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> Telephone conversation between Tim Thompson, Director of Regulatory Affairs, CBOE, and Terri Evans, Special Counsel, Division of Market Regulation ("Division"), SEC, March 28, 2000 (clarifying the definition of non-bookable orders and the manual entry of such orders).

<sup>7</sup> The Pacific Exchange, Inc. ("PCX") has adopted a similar procedure for manually handling non-bookable orders in connection with the use of the PCX's Automated Opening Rotation system. See Securities Exchange Act Release No. 41970 (September 30, 1999), 64 FR 54713 (October 7, 1999).