

IV. Conclusion

It is therefore ordered, pursuant to Section 11A of the Act¹³ and paragraph (c)(2) of Rule 11Aa3-2¹⁴ thereunder, that the proposed 4th Amendment to the CTA Plan and the proposed 2nd Amendment to the CQ Plan are approved on a permanent basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁵

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47345; File No. SR-Amex-2002-89]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the American Stock Exchange LLC Relating to Crossing Procedures for Clean Agency Crosses

February 11, 2003.

On November 5, 2002, the American Stock Exchange LLC ("Amex" or "Exchange") 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 amend Amex Rule 126(g), Commentary .02 to provide that orders of 5,000 shares or more for the account of a non-member organization may be crossed at a price at or within the bid or offer without being broken up by a specialist or Registered Trader acting as principal. The Amex filed an amendment to the proposed rule change on December 23, 2002.³ The proposed rule change, as amended, was published for notice and comment in the **Federal Register** on January 7, 2003.⁴ The Commission received no comments on the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the

rules and regulations thereunder applicable to a national securities exchange⁵ and, in particular, the requirements of section 6 of the Act⁶ and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with Section 6(b)(5) of the Act⁷ in that the Rule is 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; and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Commission believes that the proposed rule change, while eliminating the opportunity for specialists and Registered Traders to effect a proprietary transaction to provide price improvement to one side of a clean cross or the other, preserves auction market principles by providing the possibility of price improvement (because members must follow Amex Rule 151 crossing procedures), and by requiring that members trade with other market interest having time priority at that price before trading with any part of the cross transaction. In addition, the Commission believes that the proposal will enhance competition among markets in the execution of agency crosses.

It is therefore ordered, pursuant to section 19(b)(2) of the Act⁸, that the proposed rule change, as amended (SR-AMEX-2002-89), be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47346; File No. SR-CBOE-2002-26]

Self Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 to the Proposed Rule Change Increasing Position and Exercise Limits for Options on the DIAMONDS Trust

February 11, 2003.

I. Introduction

On May 20, 2002, the Chicago Board Options Exchange, Inc. ("CBOE") 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 increase position and exercise limits for options on the DIAMONDS Trust ("DIA"). The proposed rule change was published for comment in the **Federal Register** on November 6, 2002.³ The Commission received no comments on the proposal. On February 4, 2003, the CBOE filed Amendment No. 1 to the proposed rule change.⁴ This order approves the proposed rule change, and notices and grants accelerated approval to Amendment No. 1 to the proposed rule change.

II. Description of the Proposal

The CBOE proposes to increase position and exercise limits for options on the DIA from 75,000 to 300,000 contracts on the same side of the market. Consistent with the reporting requirement for QQQ options, the Exchange will require that each member or member organization that maintains a position on the same side of the market in excess of 10,000 contracts in the DIA option class, for its own account or for the account of a customer report certain information. This data would include, but would not be limited to, the option position, whether

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 46743 (October 30, 2002), 67 FR 67673 (November 6, 2002).

⁴ See Letter from Christopher R. Hill, Attorney II, Legal Division, CBOE, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated February 3, 2003 ("Amendment No. 1"). In Amendment No. 1, the CBOE corrected erroneous text in CBOE Rule 4.13(b) to maintain the reporting requirement level for DIA options specified in CBOE Rule 4.13 at 10,000 contracts. Amendment No. 1 also corrected similar references to the reporting requirement level that were contained in the SEC Rule 19b-4 filing.

¹³ 15 U.S.C. 78k-1.

¹⁴ 17 CFR 240.11Aa3-2(c)(2).

¹⁵ 17 CFR 200.30-3(a)(27).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Michael Cavalier, Associate General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation, SEC, dated December 20, 2002, and enclosures ("Amendment No. 1"). Amendment No. 1 corrected a typographical error in the text of the proposed amendment.

⁴ Securities Exchange Act Release No. 47113 (December 31, 2002), 68 FR 818.

⁵ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁶ 15 U.S.C. 78f.

⁷ 15 U.S.C. 78f(b)(5).

⁸ 15 U.S.C. 78s(b)(2), proposed rule change, as amended (SR-Amex-2002-89), be, and hereby is, approved.

⁹ 17 CFR 200.30-3(a)(12).