

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-57852; File No. SR-Amex-2008-41)

May 22, 2008

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Position and Exercise Limits for Options on the DIAMONDS Trust

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 16, 2008, the American Stock Exchange LLC (“Exchange” or “Amex”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The Exchange has designated this proposal as non-controversial under Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposed rule change effective upon filing with the Commission. 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

The Exchange proposes to amend its rules to increase the position and exercise limits applicable to options on the DIAMONDS Trust, Series 1 (“DIA”). The text of the proposed rule change is available on the Exchange’s Web site (<http://www.amex.com>), at the offices of the Exchange, and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

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 is proposing to amend its rules pertaining to position and exercise limits for options on DIA. The Exchange proposes to increase position and exercise limits for options on DIA to 300,000 contracts on the same side of the market. The Commission previously approved a similar proposal by the Chicago Board Options Exchange, Inc. ("CBOE").⁵

The Exchange also recently made permanent its increased position and exercise limits for certain equity options on the Amex which were in effect on a pilot basis.⁶ The Exchange stipulated, as part of its proposal for such permanent approval, that "its surveillance procedures

⁵ See Securities Exchange Act Release No. 47346 (February 11, 2003), 68 FR 8316 (February 20, 2003) (SR-CBOE-2002-26) (approving an increase in the position limits and exercise limits to 300,000 for DIA options). The Commission stated that "given the surveillance capabilities of the [CBOE] and the depth and liquidity in both the DIA options and the underlying cash market in DIAs, the Commission believes it is permissible to significantly raise position and exercise limits for DIA options without risk of disruption to the options or underlying cash markets." The Commission also stated that "financial and reporting requirements . . . should allow [CBOE] to detect and deter trading abuses arising from the increased position and exercise limits, and will also allow [CBOE] to monitor large positions in order to identify instances of potential risk and to assess additional margin and/or capital charges, if deemed necessary."

⁶ See Securities Exchange Act Release No. 57415 (March 3, 2008), 73 FR 12479 (March 7, 2008) (SR-Amex-2008-16).

and options reporting procedures, in conjunction with the financial requirements and risk management review procedures generally in place at the clearing firms and the Options Clearing Corporation, will serve to adequately address any concerns the Commission may have with respect to account(s) engaging in any manipulative schemes or assuming too high a level of risk exposure.”⁷ These representations also apply to the current proposal to increase the position and exercise limits for options on DIA. The Exchange now seeks to increase the position and exercise limits for options on DIA on the Amex to the level that such limits are in effect on the CBOE and other options exchanges (300,000 contracts on the same side of the market).

The Exchange asserts that the justifications behind the Commission’s approval of the CBOE proposal should support the same increased position and exercise limits on options on DIA on the Amex. Specifically, the Exchange believes that the “structure of the DIA options and the considerable liquidity of both the underlying cash and options market for DIA options lessen the opportunity for manipulation of this product and disruption in the underlying market that a lower position limit may protect against.”⁸

The Exchange believes that the reporting requirements imposed under the Exchange’s rules will help protect against potential manipulation.⁹ Additionally, the Exchange believes that such an increase in position and exercise limits on options on DIA on the Amex is required for competitive purposes as well as for purposes of consistency and uniformity among the competing options exchanges. This, taken in conjunction with the permanent establishment of other increased position and exercise limits for certain equity options on Amex, supports the Exchange’s proposal to increase the position and exercise limits applicable to DIA.

⁷ Id.

⁸ See Securities Exchange Act Release No. 47346, supra note 5.

⁹ See Amex Rule 906.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act¹⁰ in general, and Section 6(b)(5) of the Act¹¹ in particular, in that it is designed to promote just and equitable principles of trade, 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. Specifically, the Exchange believes that the structure of the DIA options and the considerable liquidity of the market for DIA options diminishes the opportunity for manipulation of this product and disruption in the underlying market that a lower position limit may protect against.

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

The Exchange believes that the proposed rule change will impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received by the Exchange on this proposal.

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

The Exchange has designated the proposed rule change as one that: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

of investors and the public interest. Therefore, the foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹² and subparagraph (f)(6) of Rule 19b-4 thereunder.¹³

The Exchange has asked the Commission to waive the operative delay to permit the proposed rule change to become operative prior to the 30th day after filing. The Exchange states that waiving the operative delay will allow the Exchange to match the position and exercise limits for the options on DIA that currently exist at other options exchanges. Because of the competitive nature of this proposal, the Exchange believes good cause exists to waive the 30-day operative delay. The Exchange notes that the Commission recently granted a waiver of the operative delay to a similar proposal by the ISE.¹⁴

The Commission believes that waiving the 30-day operative delay of the Exchange's proposal is consistent with the protection of investors and the public interest.¹⁵ Therefore, the Commission designates the proposal to be operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has fulfilled this requirement.

¹⁴ See Securities Exchange Act Release No. 57736 (April 29, 2008), 73 FR 25070 (May 6, 2008) (SR-ISE-2008-35).

¹⁵ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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 No. SR-Amex-2008-41 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-Amex-2008-41. 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, 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 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 No. SR-Amex-2008-41 and should be submitted on or before [insert date 21 days from the date of publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

Florence E. Harmon
Deputy Secretary

¹⁶ 17 CFR 200.30-3(a)(12).