

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-58341; File No. SR-Amex-2008-60)

August 11, 2008

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of a Proposed Rule Change Relating to Margin Requirements for Fixed Return Options

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, as amended (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 21, 2008, the American Stock Exchange LLC (“Amex” 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 from interested persons.

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

The Exchange proposes to amend Rule 462(d)10 to clarify the margin requirements applicable to Fixed Return Options (“FROs” or “Fixed Return Options”).<sup>3</sup>

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

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

<sup>3</sup> The Exchange commenced the trading of FROs on May 8, 2008. In August 2007, the Commission approved the Exchange proposal to list and trade FROs based on individual stocks and exchange-traded funds (“ETFs”). See Exchange Act Release No. 56251 (August 14, 2007), 72 FR 46523 (August 20, 2007). In connection with the ability to trade FROs, the Options Clearing Corporation (“OCC”) also filed proposed rule changes as well as a revision to the Options Disclosure Document (“ODD”). The Commission recently approved the ODD revisions so that FROs may commence trading on the Exchange. See Exchange Act Release No. 57744 (April 30, 2008), 73 FR 25072 (May 6, 2008)(SR-ODD-2008-01). The Commission previously approved proposed OCC rule changes in December 2007. See Exchange Act Release No. 56875 (November 30, 2007), 72 FR 69274 (December 7, 2007).

The text of the proposed rule change is available on the Amex's Web site at <http://www.amex.com>, the Office of the Secretary, the Amex 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 Amex 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 Amex 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposal is to add clarity regarding the application of FRO margin requirements in connection with "spreads" and "straddle/combination" strategies. In addition, the proposal also seeks to clarify the use of "cover" and a "cash account" in connection with FROs.

Currently, Rule 462(d)10 is silent regarding the use of "spread" and "straddle/combination" positions. With respect to a "spread" position in FROs, the Amex proposes that no margin be required on a Finish High<sup>4</sup> FRO (Finish Low<sup>5</sup> FRO) carried short in a customer's account that is offset by a long Finish High FRO (Finish Low FRO)

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<sup>4</sup> A "Finish High" FRO is defined in Rule 900 FRO(b)(2) as an option contract which returns \$100 if the underlying security closes above the strike price at expiration.

<sup>5</sup> A "Finish Low" FRO is defined in Rule 900 FRO(b)(3) as an option contract which returns \$100 if the underlying security closes below the strike price at expiration.

for the same underlying security or instrument that expires at the same time and has an exercise or strike price that is less than (greater than) the exercise or strike price of the short Finish High (Finish Low). As set forth in Rule 462(d)10(B), the long Finish High (Finish Low) must be paid for in full.

In connection with a straddle/combination, when a Finish High FRO is carried short in a customer's account and there is also carried a short Finish Low FRO that expires at the same time and has an exercise price or strike price that is less than or equal to the exercise or strike price of the short Finish High, the initial and maintenance margin required would be the exercise settlement amount applicable to one contract.

With respect to the concept of "cover" the Exchange proposes a clarification that "cover" is applicable only to "cash accounts." In such a case, a FRO carried short in a customer's account will be deemed a covered position, and eligible for the cash account, if either one of the following is held in the account at the time the FRO is written or is received into the account promptly thereafter:

- Cash or cash equivalents equal to 100% of the exercise settlement amount;
- A long FRO of the same type (Finish High or Finish Low) for the same underlying security or instrument that is paid for in full and expires at the same time, and has an exercise or strike price that is less than the exercise or strike price of the short in the case of a Finish High or greater than the exercise or strike price of the short in the case of a Finish Low; or
- An escrow agreement.

The escrow agreement must certify that the bank holds for the account of the customer as security for the agreement (A) cash, (B) cash equivalents, (C) one or more qualified equity securities, or (D) a combination thereof having an aggregate market value of not less than 100% of the exercise settlement amount and that the bank will

promptly pay the member organization the cash settlement amount in the event the account is assigned an exercise notice.

The Exchange believes that the proposed revision reducing the customer margin applicable to “spread” and “straddle/combination” positions in FROs is appropriate because risk exposure is significantly reduced under these strategies.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Exchange Act<sup>6</sup> in general and furthers the objectives of Section 6(b)(5)<sup>7</sup> in particular in that it 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, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The Exchange believes that the proposal will benefit the marketplace and provide market participants with greater clarity in connection with their responsibilities in the trading and handling of FRO transactions.

### B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

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

The Exchange did not receive any written comments on the proposed rule change.

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<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

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 Exchange 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](mailto:rule-comments@sec.gov). Please include File No. SR-Amex-2008-60 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-Amex-2008-60. 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 at (<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 Number SR-Amex-2008-60 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

Florence. E. Harmon  
Acting Secretary

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<sup>8</sup> 17 CFR 200.30-3(a)(12).