

Hutchins, the party the investors have chosen to hold accountable for investment results, through the voting rights pursuant to section 15(a) of the Act and rule 18f-2 thereunder concerning the Trust's Management Agreement with Mitchell Hutchins. Applicants believe that a shareholder vote concerning a Sub-Advisory Agreement prior to its effective date should not be required, particularly when doing so will (i) increase the Trust's expenses and (ii) may delay prompt implementation of the action Mitchell Hutchins (and ultimately the investors themselves) has determined is most beneficial to the Trust's shareholders. Therefore, applicants contend that requiring the Trust to obtain immediate and costly shareholder approval for every change in control of a Sub-Adviser is unreasonably burdensome, particularly where shareholders have chosen Mitchell Hutchins to determine the impact of the proposed change on their behalf.

5. Section 6(c) of the Act provides that the SEC may exempt any person, security, or transaction from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the policies and purposes fairly intended by the policies and provisions of the Act. Applicants believe that the requested relief meets this standard.

#### Applicants' Conditions

Applicants agree that the requested exemption is subject to the following conditions:

1. Mitchell Hutchins will not enter into a Sub-Advisory Agreement with any Sub-Adviser that is an affiliated person (as defined in section 2(a)(3) of the Act) of the Trust or Mitchell Hutchins other than by reason of serving as a Sub-Adviser to one or more of the Portfolios (an "Affiliated Sub-Adviser") without such agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Portfolio.

2. At all times, a majority of the Trustees of the Trust will be persons each of whom is not an "interested person" of the Trust (as defined in section 2(a)(19) of the Act) (the "Independent Trustees"), and the nomination of new or additional Independent Trustees will be placed with the discretion of the then existing Independent Trustees.

3. When a Sub-Adviser change is proposed for a Portfolio with an Affiliated Sub-Adviser, the Trustee of

the Trust, including a majority of the Independent Trustees, will make a separate finding, reflected in the Trust's board minutes, that the change is in the best interests of the Portfolio and its shareholders and does not involve a conflict of interest from which Mitchell Hutchins or the Affiliated Sub-Adviser derives an inappropriate advantage.

4. Mitchell Hutchins will provide general management and administrative services to the Trust, and, subject to review and approval by the Trust's Trustees, will: (a) Set the Portfolios' overall investment strategies; (b) select Sub-Advisers; (c) allocate and, when appropriate, reallocate the Portfolios' assets among Sub-Advisers; (d) monitor and evaluate the performance of Sub-Advisers; and (e) ensure that the Sub-Advisers comply with the Trust's investment objectives, policies, and restrictions.

5. Before a future Portfolio that does not presently have an effective registration statement may rely on the order, its initial shareholder will approve the multi-manager structure before Portfolio shares are offered to the public.

6. Within 90 days of the hiring of any new Sub-Adviser or the implementation of any proposed material change in a Sub-Advisory Agreement, the Trust will furnish shareholders all information about a new Sub-Adviser or Sub-Advisory Agreement that would be included in a proxy statement. Such information will include any change in such disclosure caused by the addition of a new Sub-Adviser or any proposed material change in a Portfolio's Sub-Advisory Agreement. The Trust will meet this condition by providing shareholders, within 90 days of the hiring of a Sub-Adviser or the implementation of any material change to the terms of a Sub-Advisory Agreement, with an information statement meeting the requirements of Regulation 14C and Schedule 14C under the Securities Exchange Act of 1934 (the "Exchange Act"). The information statement also will meet the requirements of Schedule 14A under the Exchange Act.

7. No Trustee or officer of the Trust or Mitchell Hutchins will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by any such Trustee or officer) any interest in a Sub-Adviser except for: (a) ownership of interests in Mitchell Hutchins or any entity that controls, is controlled by, or is under common control with Mitchell Hutchins; or (b) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly-

traded company that is either a Sub-Adviser or an entity that controls, is controlled by, or is under common control with a Sub-Adviser.

8. The Trust will disclose in all prospectuses relating to any Portfolio the existence, substance, and effect of any order granted pursuant to the application.

9. Shares of the Trust will be offered exclusively to participants in the PACE Program or other asset allocation services offered by professional asset managers who, for compensation, engage in the business of advising others as to the value of securities or as to the advisability of investing in, purchasing or selling securities.

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

Margaret H. McFarland,

*Deputy Secretary.*

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[Release No. 34-36567; File No. SR-Amex-95-35]

### **Self-Regulatory Organizations; Order Granting Partial Approval to a Proposed Rule Change by the American Stock Exchange, Inc., Relating to the Members' Compliance With Position and Exercise Limits for Non-Amex Listed Options**

December 8, 1995.

On August 25, 1995, the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), 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> a proposed rule change to amend (1) Amex Rule 900(a), "Applicability," to confirm the Exchange's enforcement authority over Amex members' options transactions effected on another options exchange; and (2) Amex Rules 904, "Position Limits," and 905, "Exercise Limits," to require Amex members who trade non-Amex listed option contracts and who are not members of the exchange where the options are traded to comply with the option position and exercise limits set by the exchange where the transactions are effected.<sup>3</sup> The Amex

<sup>1</sup> 15 U.S.C. 78s(b)(1)(1988).

<sup>2</sup> 17 CFR 240.19b-4 (1994).

<sup>3</sup> Position limits impose a ceiling on the number of option 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 an investor or group of investors

subsequently filed Amendment No. 1 to the proposal.<sup>4</sup>

Notice of the proposed rule change and Amendment No. 1 were published for comment and appeared in the Federal Register on October 20, 1995.<sup>5</sup> No comments were received on the proposal. This order grants partial approval of the portion of the proposal amending Amex Rules 904 and 905.<sup>6</sup>

Currently, Amex Rule 904 prohibits Amex members from effecting, for any account in which the member has an interest or for any customer account, transactions in option contracts dealt in on the Exchange that would exceed the Amex's established position limits. Similarly, Amex Rule 905 prohibits members from exercising, for any account in which the member has an interest or for any customer account, a long position in option contracts dealt in on the Exchange that would exceed the Amex's established exercise limits. As presently written, Amex Rules 904 and 905 apply only to option classes traded on the Amex and not to opening transactions or exercises in option classes traded on another options exchange. Since each options exchange has jurisdiction only over its own members, a jurisdictional loophole exists where, for example, an Amex member exceeds position or exercise limits on another options exchange of which it is not a member in an option class not listed on the Amex. Under those circumstances, the Amex could not take disciplinary action against its member for violating the position and exercise limit rules in an option class traded on another options exchange. Similarly, the options exchange where the option class is traded could not bring an action since it does not have jurisdiction over a non-member.

acting in concert. Exercise limits prohibit an investor or group of investors acting in concert from exercising more than a specified number of puts or calls in a particular class within five conservative business days.

<sup>4</sup> In Amendment No. 1, the Amex indicated that it will apply the interpretations and policies of another exchange when applying that exchange's position and exercise limit rules to an Amex member's transactions on that exchange. In addition, the Amex stated that it will take disciplinary action pursuant to its own rules if the Amex finds that an Amex member has violated the position and exercise limit rules of another exchange. See Letter from Claire McGrath, Managing Director and Special Counsel, Derivative Securities, Amex, to Michael Walinskas, Branch Chief, Derivatives Regulation, Office of Self-Regulatory Oversight, Division of Market Regulation, Commission, dated September 19, 1995 ("Amendment No. 1").

<sup>5</sup> Securities Exchange Act Release No. 36353 (October 10, 1995), 60 FR 54266.

<sup>6</sup> In partially approving the Amex's proposal, the Commission is not approving, at this time, the portion of the proposal amending Amex Rule 900(a).

In order to close this jurisdictional loophole, the Amex proposes to extend its disciplinary jurisdiction to include members' violations of the position and exercise limits of other options exchanges. Specifically, the Amex proposes to amend Amex Rule 904 to prohibit Amex members who are not members of the exchange where the options transactions are effected from effecting, for any account in which the Amex member has an interest or for any customer account, transactions in option contracts that would exceed the position limits established by the exchange where the options are traded. Similarly, the Amex proposes to amend Exchange Rule 905 to prohibit Amex members who are not members of the exchange where the options transactions are effected from exercising, for any account in which the Amex member has an interest or for any customer account, a long position in option contracts that would exceed the exercise limits established by the exchange where the options are traded.

The Amex notes that the proposed extension of jurisdiction will apply only when the Amex member is not a member of the other options exchange. In addition, the Amex will apply the applicable position and exercise limit rules of the other exchange, as well as its interpretations and policies.<sup>7</sup>

The Amex believes that the proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Section 6(b)(5), 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 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 exchange, and, in particular, the requirements of Section 6 (b) (5) <sup>8</sup> in that it is designed to prevent fraudulent and manipulative acts and practices and to protect investors and the public interest. Specifically, the Amex has noted that Exchange Rules 904 and 905 currently apply solely to option contracts dealt in on the Amex and do not prohibit Amex

members from exceeding the position and exercise limits set by another exchange for non-Amex listed option contracts. Thus, if an Amex member exceeds the position and exercise limits of another options exchange, and the Amex member is not a member of the exchange which lists the options, then neither the Amex or the exchange that lists the options is able to enforce its position and exercise limits against the Amex member. The proposal eliminates this loophole and strengthens the Exchange's rules by requiring an Amex member who trades non-Amex listed option contracts on another exchange, and who is not a member of that exchange, to comply with the option position and exercise limits set by the exchange where the transactions are effected.<sup>9</sup>

As the Commission has noted in the past,<sup>10</sup> options position and exercise limits are intended to prevent the establishment of large options positions that can be used or might create incentives to manipulate or disrupt the underlying market so as to benefit the options position. In particular, position and exercise limits are designed to minimize the potential for mini-manipulations<sup>11</sup> and for corners or squeezes of the underlying market. The proposal extends the benefits of the position and exercise limit rules to include all exchange-traded options transactions entered into by Amex members by bringing an Amex member's customer transactions in non-Amex exchange listed options within the Amex's jurisdiction for position and exercise limit purposes.

Finally, the Commission notes that the Amex's proposal to amend Amex Rules 904 and 905 is identical to proposals recently approved by the Commission.<sup>12</sup>

<sup>9</sup> Under the proposal, the Amex will also apply the interpretations and policies of the exchange where the options transactions are effected. The Amex will take disciplinary action pursuant to its own rules when it finds that an Amex member has violated the position and exercise limit rules of another exchange. See Amendment No. 1, *supra* note 4.

<sup>10</sup> See, e.g., Securities Exchange Act Release No. 33283 (December 3, 1993), 58 FR 65204 (December 13, 1993) (order approving File No. SR-CBOE-93-43).

<sup>11</sup> Mini-manipulation is an attempt to influence, over a relatively small range, the price movement in a stock to benefit a previously established derivatives position.

<sup>12</sup> See Securities Exchange Act Release Nos. 36242 (September 18, 1995), 60 FR 49305 (September 22, 1995) (order approving File No. SR-CBOE-95-22); 36257 (September 20, 1995), 60 FR 50228 (September 28, 1995) (order approving File No. SR-PHLX-95-31); and 36350 (October 6, 1995), 60 FR 53654 (October 16, 1995) (order approving File No. SR-PSE-95-17).

<sup>7</sup> See Amendment No. 1, *supra* note 4. The Commission notes that the position and exercise limits in equity options are uniform among all options markets.

<sup>8</sup> 15 U.S.C. 78f(b)(5) (1988 & Supp. V 1993).

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>13</sup> that the portion of the proposed rule change (SR-Amex-95-35) amending Amex Rules 904 and 905 is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

Margaret H. McFarland,

*Deputy Secretary.*

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[Release No. 34-36569; File No. SR-SCE-95-10]

**Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by Cincinnati Stock Exchange, Inc., Relating to the Definitions of Public and Professional Agency Orders**

December 11, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 29, 1995, the Cincinnati Stock Exchange, Inc. ("CSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. 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 CSE hereby proposes to amend the definition of public agency order and professional agency order as follows, with added language in italics and deletions in brackets:

**Rule 11.9 National Securities Trading System**

(a) No Change.

(1) through (6) No Change.

(7) The term "public agency order" means any order for *an account covered by Section 11(a)(1)(E) of the Securities Exchange Act of 1934* [the account of a person other than a member, an Approved Dealer, or a person who could become an Approved Dealer by complying with this Rule with respect to his use of the System], which is represented, as agent, by a User.

(8) The term "professional agency order" means an order entered by a User as agent for the account of a broker-dealer *or for an account which is not*

*covered by Section 11(a)(1)(E) of the Securities Exchange Act of 1934.*

(b) through (u) No Change.

**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 self-regulatory organization 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 self-regulatory organization 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**

CSE Rule 11.9(J) grants "public agency" orders a special time priority on the CSE, *i.e.*, public agency orders have priority over professional agency orders at the same price. The intent of the proposed rule change is to ensure that the privilege of this super-priority is granted only to those for whom it was originally intended by clarifying the distinction between "public agency" and professional agency" order flow.<sup>1</sup>

Paragraph (1)(E) in Section 11(a) of the Act, which addresses certain issues related to trading by Exchange members, segregates for special treatment "any transaction for the account of a natural person, the estate of a natural person, or a trust created by a natural person for himself or another natural person." The New York Stock Exchange ("NYSE") utilizes this definition of public agency business in NYSE Rule 80A, its rule for limiting trading during significant market declines. Specifically, NYSE Rule 80A(e)(iii) defines an "account of an individual investor" as "an account covered by Section 11(a)(1)(E) of the Securities Exchange Act of 1934." The CSE is proposing to incorporate Section 11(a)(1)(E) into its definition of public and professional agency orders. The Exchange believes that it is appropriate to articulate definitions of agency business that are consistent with the general understanding and practice of the securities industry.

<sup>1</sup>The Commission notes that several of the Exchanges' rules, such as its order guarantee and preferencing rules, distinguish between public and professional agency orders. Thus, the proposed rule change would affect certain orders in these contexts as well. See, *e.g.*, CSE Rules 11.9(c) and (u).

**2. Statutory Basis**

The proposed rule change is consistent with Section 6(b) of the Act in general, and furthers the objectives of Section 6(b)(5) in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest.

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

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

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

The CSE informed the other Intermarket Trading System participants of its intent to file this rule proposal, and no comments were received.

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

Within 35 days of the publication of this notice in the Federal Register or within such other 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 self-regulatory organization consents, the Commission will:

(A) By order approve the 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 forgoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. 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 maybe 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 Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CSE. All submissions

<sup>13</sup> 15 U.S.C. 78s(b)(2) (1988).

<sup>14</sup> 17 CFR 200.30-3(a)(12) (1994).