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, 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 Amex. 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–2004–110 and should be submitted on or before February 2, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E5–74 Filed 1–11–05; 8:45 am]

BILLING CODE 8010–01–P

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50972; File No. SR–Amex–2004–25]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change and Amendments No. 1 and No. 2 Thereto by the American Stock Exchange LLC Relating to Revisions to Amex Rule 111

January 6, 2005.

I. Introduction

On April 28, 2004, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''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 111. On May 10, 2004, the Exchange submitted Amendment No. 1 to the proposed rule change.[3] On June 8, 2004, the Exchange submitted Amendment No. 2 to the proposed rule change.[4] The proposed rule change and Amendments Nos. 1 and 2 were published for comment in the **Federal Register** on October 25, 2004.[5] No comments were received on the amended proposal. This order approves the proposed rule change, as amended.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Description

A. Background

The original Act gave the Commission the authority to regulate ''floor trading'' [6] by members of national securities exchanges.[7] In 1964, the Commission exercised this authority by adopting SEC Rule 11a–1—''Regulation of Floor Trading.'' [8] Rule 11a–1 provided, with certain exceptions, that no member of a national securities exchange, while on the floor of such exchange, could initiate any transaction in any security admitted to trading on the exchange, for an account in which such member had an interest. One of the exceptions permitted member transactions for their own account if such transactions were executed in conformity with a Commission-approved exchange plan designed to eliminate floor trading activities that were not beneficial to the market.

Shortly after the adoption of SEC Rule 11a–1, the Exchange submitted a floor trading plan (''Plan'').[9] As part of the Plan, the Exchange proposed Amex Rules 110, 111, and 112, which (1) created a registered equity trader program, and (2) incorporated the trading exemptions found in SEC Rule 11a–1(b)(1) through (b)(6). On July 23, 1964, the Commission approved the Exchange's Plan,[10] together with revisions to the Plan that exempted from the prohibitions contained in SEC Rule 11a–1 and the Plan: (1) Transactions in bonds, (2) hedging transactions by rights specialists in the underlying security, and (3) certain block transactions.[11]

Generally, Amex Rule 110 prohibits any member from initiating transactions while on the floor for an account in which such member has an interest unless such member is registered as a ''Registered Trader.'' Registered Traders are limited in the transactions they may initiate on the floor under Amex Rule 111. For example, Registered Traders must meet stabilization tests, may not act as a broker for off-floor orders in stocks in which such Registered Trader has initiated transactions for his own account, and may not retain priority over off-floor orders when establishing or increasing positions in his own account. Amex Rule 111(f)(1) through (6) exempts certain member transactions from the Registered Trader requirements set forth in Amex Rules 110 and 111 and reflects the exemptions from Rule 11a–1(b)(1) through (6). For example, transactions by registered specialists in their specialty stock, transactions by odd-lot dealers, and bona fide arbitrage transactions of members are not subject to the restrictions set forth in Amex Rules 110 and 111.

In 1975, Congress substantially amended Section 11(a) of the Act [12] by extending the general prohibition on member floor trading embodied in SEC Rule 11a-1 [13] to off-floor member trading. Specifically, section 11(a) of the Act prohibits, subject to certain

[3] *See* Letter from Bill Floyd-Jones, Counsel, Exchange, to Nancy Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated May 7, 2004 (''Amendment No. 1''). In Amendment No. 1, the Exchange clarified the proposed rule language, and provided additional explanation in the purpose section of the proposed rule change.

[4] *See* Letter from Bill Floyd-Jones, Counsel, Exchange, to Nancy Sanow, Assistant Director, Division, Commission, dated June 7, 2004 (''Amendment No. 2''). In Amendment No. 2, the Exchange added a definition of ''bona fide hedge'' to the text of the proposed rule change. In Amendment No. 2, the Exchange also reprinted pages 33—35 of Securities Exchange Act Release No. 15533 (January 29, 1979) as proposed Commentary .13 to the text of the proposed rule change.

[5] *See* Securities Exchange Act Release No. 50552 (October 15, 2004), 69 FR 62308.

[6] The Commission has defined ''floor trading'' as trading by members of national securities exchanges for their own account while personally present on the trading floor of an exchange. *See* Securities Exchange Act Release No. 7290 (April 9, 1964), 29 FR 5168 (April 15, 1964).

[7] As originally adopted, section 11(a) of the Act provided:

The Commission shall prescribe such rules and regulations as it deems necessary or appropriate in the public interest or for the protection of investors, (1) to regulate or prevent floor trading by members of national securities exchanges, directly or indirectly for their own account or for discretionary accounts, and (2) to prevent such excessive trading on the exchange but off the floor by members, directly or indirectly for their own account, as the Commission may deem detrimental to the maintenance of a fair and orderly market. It shall be unlawful for a member to effect any transaction in a security in contravention of such rules and regulations, but such rules and regulations may make such exemptions for arbitrage transactions, for transactions in exempted securities, and within the limitations of subsection (b) of this section, for transactions by odd-lot dealers and specialists, as the Commission may deem necessary or appropriate in the public interest or for the protection of investors.

[8] *See* Securities Exchange Act Release No. 7330 (June 2, 1964), 29 FR 7380 (June 6, 1964).

[9] Securities Exchange Act Release No. 7359 (June 30, 1964), 29 FR 9344 (July 8, 1964).

[10] Securities Exchange Act Release No. 7374, 29 FR 10632 (July 30, 1964).

[11] Securities Exchange Act Release No. 7375 (July 23, 1964), 29 FR 10632 (July 30, 1964).

[12] *See* 15 U.S.C. 78k(a).

[13] 17 CFR 240.11a–1.

exceptions, any member of an exchange from effecting any transaction on such exchange for its own account, the account of an associated person or an account with respect to which it or an associated person thereof exercises investment discretion. The statutory exemptions to the general prohibition found in section 11(a)(1) of the Act include, among other things, bona fide arbitrage and bona fide hedge transactions. These exceptions reflect Congress' belief that these types of trading activities either contributed to the maintenance of fair and orderly markets, or at least had not given rise to serious abuse.[14]

B. Proposed Rule Change

The Exchange proposes to amend Amex Rule 111 to conform it to the 1975 amendments to section 11(a) of the Act by allowing members registered as options specialists and registered options traders (''ROTs'') to initiate, while on the Amex floor, bona fide hedging transactions for their accounts in Amex listed securities and to allow members registered as equity specialists to initiate, while on the Amex floor, bona fide hedging transactions for their accounts in options traded on Amex. Currently, as noted above, Amex members can execute transactions on the floor for accounts in which they have an interest only if they are Registered Traders. The proposed rule change would permit equity specialists, options specialists, and ROTs to initiate bona fide hedge transactions without having to register as Registered Traders and without being subject to the limitations set forth in Amex Rules 110 and 111.[15]

Under the Exchange's proposed rule change, options specialists and ROTs could give an order for their account directly to an Amex broker on the floor for a security underlying an option in which they are registered for the purpose of acquiring or liquidating a bona fide hedge position through a trade on the Exchange. Similarly, Amex proposes to permit equity specialists (subject to Amex Rule 175, which regulates option transactions by equity specialists) to give an order for their account directly to an Amex broker on the floor for a security overlying an equity in which they are registered for the purpose of acquiring or liquidating a bona fide hedge position through a trade on the Exchange.

The proposed rule would exempt bona fide hedge transactions in securities underlying options by option specialists and ROTs from the requirements of Amex Rule 110, and paragraphs (a) through (e) of Amex Rule 111. Likewise, the proposed rule would exempt bona fide hedge transactions in options overlying securities by equity specialists from the requirements of Amex Rules 110, 111, and 958 (which regulates the transactions of ROTs).

The Exchange also proposes under Amex Rule 111(i) to add a definition of ''bona fide hedge'' which shall have the meaning found in SEC Rule 11a1–3(T) and in pages 33–35 of the release adopting that rule.[16] The Exchange further proposes to provide a reprint of pages 33–35 of the 1979 Release in proposed Commentary 13 of Amex Rule 111.

Brokers who receive orders from equity specialists, options specialists or ROTs would be required to prepare a record of any bona fide hedge order given to them,[17] and specialists and ROTs who give bona fide hedge orders to brokers would have to prepare and submit to the Exchange a record of all such orders and transactions effected for an account in which they have an interest.[18]

III. Discussion

After careful consideration, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange,[19] and, in particular, the requirements of section 6(b)(5) of the Act,[20] which requires that the rules of a national securities exchange be designed to, among other things, prevent fraudulent and manipulative acts and practices, and promote just and equitable principles of trade. In addition, the Commission believes that the Amex's proposal is consistent with section 11(a) of the Act.

Specifically, Amex proposes to allow its members to effect a certain type of proprietary transaction on the Amex floor that is currently permitted under the Act. Section 11(a)(1)(D) of the Act allows members of a national securities exchange to engage in ''any bona fide hedge transaction involving a long or short position in an equity security and a long or short position in a security entitling the holder to acquire or sell such equity security.''[21] The Commission has defined bona fide hedge transactions for the purposes of section 11(a)(1)(D) of the Act.[22] In the 1979 Release, the Commission stated that, while the application of the term is largely a matter of custom and practice, the term bona fide hedge implied ''an appreciable offset of risk, for all or part of the position being hedged.''[23] The Commission continued, in the 1979 Release, to describe whether particular combinations of stock and options positions would result in risk reduction, the timing of hedging transactions, and the liquidation of hedge positions.[24]

Amex has proposed to adopt the Commission's definition of bona fide hedge set forth in the 1979 Release and in Rule 11a1–3(T). Accordingly, the Commission believes that Amex's proposed definition is consistent with the requirements of the Act. As noted above, the Commission's definition is specific as to the types and sizes of transactions that can be considered bona fide hedges, the timing of executing hedge transactions and liquidating hedge positions. Amex must ensure that the bona fide hedge transactions executed by specialists and ROTs comply with these requirements for Section 11(a) exemption purposes.[25] Amex must also ensure that equity specialists continue to comply with Amex Rule 175, which regulates option transactions by equity specialists.

The Commission notes that the Exchange's proposed rule change does not alter the general prohibition on side-by-side trading[26] and integrated market

[14] *See* Securities Act Amendments of 1975, Report of the Senate Comm. on Banking, Housing and Urban Affairs to Accompany S. 249, S. Rep. No. 94–75, 94th Cong., 1st Sess. 99 (1975).

[15] Amex Rules 110 and 111 apply to options transactions pursuant to Amex Rules 950(a) and 958.

[16] *See* Securities Exchange Act Release No. 15533 (January 29, 1979), 44 FR 6084, 6090–6091 (January 31, 1979) (''1979 Release'').

[17] *See* Amex Rule 153.

[18] *See* Amex Rules 957 and 175, Guidelines for Specialists' Specialty Option Transactions Pursuant to Rule 175, paragraph (j).

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

[20] 15 U.S.C. 78f(b)(5).

[21] 15 U.S.C. 78k(a)(1)(D). The Commission also has extended the bona fide hedge definition to options to options hedging. *See* 17 CFR 240.11a1–3(T).

[22] *See* 1979 Release, *supra* note 16, at 6090–6091.

[23] *See id.* at 6090.

[24] *See id.* at 6090–6091.

[25] For example, in the 1979 Release, the Commission noted that to the extent that a position more than offsets the risk of the position to be hedged, the excess position would not be part of a bona fide hedge for the purposes of Section 11(a)(1)(D) of the Act. *See id.* at 6091.

[26] ''Side-by-side trading'' refers to the trading of securities and related derivative products at the same location, though not necessarily by the same specialist. *See* Securities Exchange Act Release No. 46213 (July 16, 2002), 67 FR 48232, 48233, note 9 (July 23, 2002).

making[27] on the Exchange.[28] Accordingly, equity specialists may not act as specialists or ROTs in options overlying the stocks in which they are registered, and options specialists and ROTs may not act as specialists in the securities underlying the options in which they are registered. Furthermore, Amex may not move the location of stock and options trading posts such that related stocks and options are traded at the same or adjacent locations on the floor.[29]

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[30] that the proposed rule change (SR–Amex–2004–25), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[31]

J. Lynn Taylor,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50962; File No. SR–CBOE–2004–88]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No.1 Thereto Relating to the Customer Large Trade Discount Program

January 5, 2005.

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 December 21, 2004, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by CBOE. On January 3, 2005, CBOE amended the proposed rule change (''Amendment No. 1'').[3] The proposed rule change, as amended, has been filed by CBOE as a non-controversial filing pursuant to Rule 19b–4(f)(6) under the Act.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested parties.

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

CBOE proposes to amend its Fee Schedule to make permanent its Customer Large Trade Discount Program (''Program'') and to lower the contract volume cap beyond which customer transaction fees for its Dow Jones index options would not be assessed. The text of the proposed rule change, as amended, is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE 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 CBOE 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

In July 2003, the Exchange established a six-month pilot program providing a customer large trade discount in the form of a cap on the quantity of customer contracts that are assessed transaction fees for most CBOE index options.[5] The Program has been extended twice and is now due to expire on December 31, 2004.[6] The Exchange proposes to make the Program permanent. According to CBOE, the results of the Program during the pilot period reflect significant savings for CBOE customers as well as a significant increase in the quantity of large orders in the subject options classes executed on the Exchange.

The Exchange also proposes lowering the contract volume fee cap for options on the Dow Jones Industrial Average (including options on the Diamonds) to 5,000 from 7,500, to encourage larger orders be sent to the Exchange in these products. Otherwise, all other terms of the Program would remain unchanged. The Exchange intends to implement the lower contract volume fee cap for the Dow Jones index options on January 1, 2005.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with section 6(b) of the Act,[7] in general, and furthers the objectives of section 6(b)(4) of the Act[8] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members and other persons using its facilities.

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

CBOE does not believe that the proposed rule change, as amended, would impose any burden on competition that is not necessary or appropriate in furtherance of 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 with respect to the proposed rule change.

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

The foregoing proposed rule change, as amended, has become effective pursuant to section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder[10] because the proposed rule change: (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

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[27] ''Integrated market making'' refers to the trading of securities and related derivative products by the same specialist or specialist firm. *See id.* at 48233, note 10.

[28] The Commission notes that, currently, specified exchange-traded funds and trust issued receipts and their related options may be traded on the Amex by the same Exchange specialist or specialist firm without informational or physical barriers or other restrictions. *See id.* at 48236.

[29] *See* Securities Exchange Act Release No. 26147 (October 3, 1988), 53 FR 39956 (October 7, 1988).

[30] 15 U.S.C. 78s(b)(2).

[31] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, CBOE amended the proposed rule change to revise Note 2 to the Exchange's Fee Schedule to delete the reference to the dates that the pilot program with respect to the Customer Large Discount Trade Program was in effect.

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release No. 48223 (July 24, 2003), 68 FR 44978 (July 31, 2003) (SR–CBOE–2003–26).

[6] *See* Securities Exchange Act Release No. 49118 (January 22, 2004), 69 FR 4335 (January 29, 2004) (SR–CBOE–2003–60), and Securities Exchange Act Release No. 50175 (August 10, 2004), 69 FR 51129 (August 17, 2004) (SR–CBOE–2004–38).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).