

or VLI Accounts not registered as investment companies under the Act, pass-through voting privileges will be extended to owners of such Contracts to the extent granted by the Participating Insurance Company. Accordingly, such Participating Insurance Companies, where applicable, will vote the shares of each Fund held in their VLI Accounts and VA Accounts in a manner consistent with voting instructions timely received from Variable Contract owners. Participating Insurance Companies will be responsible for assuring that each of their VLI and VA Accounts investing in a Fund calculates voting privileges in a manner consistent with all other Participating Insurance Companies investing in that Fund.

The obligation to calculate voting privileges as provided in this Application shall be a contractual obligation of all Participating Insurance Companies under their participation agreement with the Fund. Each Participating Insurance Company will vote shares of each Fund held in its VLI or VA Accounts for which no timely voting instructions are received, as well as shares attributed to it, in the same proportion as those shares for which voting instructions are received. Each Plan will vote as required by applicable law, governing Plan documents and as provided in this application.

7. As long as the Act requires pass-through voting privileges to be provided to Variable Contract owners or the Commission interprets the Act to require the same, a Fund investment adviser (or its affiliates) will vote their shares of the Fund in the same proportion as all votes cast on behalf of all Variable Contract owners having voting rights; provided, however, that such an investment adviser (or affiliates) shall vote its shares in such other manner as may be required by the Commission or its staff.

8. Each Fund will comply with all provisions of the Act requiring voting by shareholders (which, for these purposes, shall be the persons having a voting interest in its shares), and, in particular, the Fund will either provide for annual meetings (except to the extent that the Commission may interpret Section 16 of the Act not to require such meetings) or comply with Section 16(c) of the Act (although each Fund is not, or will not be, one of those trusts of the type described in Section 16(c) of the Act), as well as with Section 16(a) of the Act and, if and when applicable, Section 16(b) of the Act. Further, each Fund will act in accordance with the Commission's interpretations of the requirements of Section 16(a) with respect to periodic elections of

directors/trustees and with whatever rules the Commission may promulgate thereto.

9. A Fund will make its shares available to the VLI Accounts, VA Accounts, and Plans at or about the time it accepts any seed capital from its investment adviser (or affiliates) or from a general account of a Participating Insurance Company.

10. Each Fund has notified, or will notify, all Participants that disclosure regarding potential risks of mixed and shared funding may be appropriate in VLI Account and VA Account prospectuses or Plan documents. Each Fund will disclose, in its prospectus that: (a) Shares of the Fund may be offered to both VA Accounts and VLI Accounts and, if applicable, to Plans, (b) due to differences in tax treatment and other considerations, the interests of various Variable Contract owners participating in the Fund and the interests of Plan participants investing in the Fund, if applicable, may conflict, and (c) the Fund's Board will monitor events in order to identify the existence of any material irreconcilable conflicts and to determine what action, if any, should be taken in response to any such conflicts.

11. If and to the extent Rule 6e-2 and Rule 6e-3(T) under the Act are amended, or Rule 6e-3 under the Act is adopted, to provide exemptive relief from any provision of the Act, or the rules thereunder, with respect to mixed or shared funding, on terms and conditions materially different from any exemptions granted in the order requested in this Application, then each Fund and/or Participating Insurance Companies, as appropriate, shall take such steps as may be necessary to comply with Rules 6e-2 or 6e-3(T), as amended, or Rule 6e-3, to the extent such rules are applicable.

12. Each Participant, at least annually, shall submit to the Board of each Fund such reports, materials or data as the Board reasonably may request so that the directors/trustees of the Board may fully carry out the obligations imposed upon the Board by the conditions contained in this Application. Such reports, materials and data shall be submitted more frequently if deemed appropriate by the Board of a Fund. The obligations of the Participants to provide these reports, materials and data to the Board, when it so reasonably requests, shall be a contractual obligation of all Participants under their participation agreement with the Fund.

13. All reports of potential or existing conflicts received by a Board, and all Board action with regard to determining the existence of a conflict, notifying

Participants of a conflict and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the Board or other appropriate records, and such minutes or other records shall be made available to the Commission upon request.

14. Each Fund will not accept a purchase order from a Qualified Plan if such purchase would make the Plan an owner of 10 percent or more of the net assets of the Fund unless the Plan executes an agreement with the Fund governing participation in the Fund that includes the conditions set forth herein to the extent applicable. A Plan will execute an application containing an acknowledgement of this condition at the time of its initial purchase of shares.

Conclusion

Applicants submit, for all the reasons explained above, that the exemptions requested are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

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

Florence E. Harmon,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60554; File No. SR-NYSEAmex-2009-42]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, Relating to the Electronic Trading of Complex Orders

August 21, 2009.

I. Introduction

On July 9, 2009, NYSE Amex LLC ("NYSE 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 proposal to adopt rules relating to the electronic trading of complex orders. The proposed rule change was published for comment in the **Federal Register** on July

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

20, 2009.³ NYSE Amex filed Amendment No. 1 to the proposal on August 19, 2009.⁴ The Commission received no comments regarding the proposed rule change. This order provides notice of filing of Amendment No. 1 to the proposed rule change and grants accelerated approval to the proposed rule change, as modified by Amendment No. 1.

II. Description of the Proposal

NYSE Amex proposes to adopt NYSE Amex Rule 980NY, "Electronic Complex Order Trading," to describe the trading of Electronic Complex Orders on NYSE Amex. Electronic Complex Orders include any Complex Order, as defined in NYSE Amex Rule 900.3NY(e), and any Stock/option Order, as defined in NYSE Amex Rule 9003.NY(h), that is entered into the NYSE Amex system.⁵ The definition of Complex Order is consistent with the definition of complex trade used for purposes of the Plan For the Purpose of Creating and Operating an Intermarket Option Linkage ("Linkage Plan") in connection with the Linkage Plan's exemption from trade-through liability for complex trades. Accordingly, the individual legs of an Electronic Complex Order may be executed at prices outside the National Best Bid or Offer, although no leg of an Electronic Complex Order will be executed at a price outside of the NYSE Amex best bid or offer for that leg.⁶

³ See Securities Exchange Act Release No. 60297 (July 13, 2009), 74 FR 35223.

⁴ Amendment No. 1 modifies the text of the proposed rule to add to NYSE Amex Rule 980NY(c)(i) a reference to "quotes" that was omitted erroneously, and to replace an incorrect cross-reference in NYSE Amex Rule 980NY(c)(ii) with a reference to executions "against such new order(s) or quote(s)" to describe the execution of resting Electronic Complex Orders. The revision to NYSE Amex Rule 980NY(c)(ii) harmonizes the rule text with the description provided in the purpose section of the proposal.

⁵ See NYSE Amex Rule 980NY. NYSE Amex Rule 900.3NY(e) defines a Complex Order as "any order involving the simultaneous purchase and/or sale of two or more different option series in the same underlying security, for the same account, in a ratio that is equal to or greater than one-to-three (.333) and less than or equal to three-to-one (3.00) and for the purpose of executing a particular investment strategy." NYSE Rule 900.3NY(h) defines a Stock/option Order as "an order to buy or sell a stated number of units of an underlying stock or a security convertible into the underlying stock ("convertible security") coupled with the purchase or sale of option contract(s) on the opposite side of the market representing either (A) the same number of units of the underlying stock or convertible security, or (B) the number of units of the underlying stock necessary to create a delta neutral position, but in no case in a ratio greater than 8 option contracts per unit of trading of the underlying stock or convertible security established for that series by the Clearing Corporation."

⁶ See NYSE Amex Rule 980NY(c).

An Electronic Complex Order entered into the NYSE Amex system is routed to the Complex Matching Engine ("CME") for possible execution against other Electronic Complex Orders or against individual quotes and orders in the Consolidated Book.⁷ Electronic Complex Orders that are not executed immediately by the CME are routed to the Consolidated Book.⁸ Electronic Complex Orders in the Consolidated Book are ranked in price/time priority based on the total net debit or credit price for the order and the time of order entry, provided that customer Electronic Complex Orders are ranked ahead of non-customer Complex Orders at the same price.⁹

The CME will automatically execute an incoming marketable Electronic Complex Order against an Electronic Complex Order in the Consolidated Book or, if the incoming order is not marketable against another Electronic Complex Order, against individual orders or quotes in the Consolidated Book that can fill the incoming order in full or in a permissible ratio.¹⁰ Notwithstanding the foregoing, individual Customer orders in the Consolidated Book that could fill an incoming Electronic Complex Order in full, or in a permissible ratio, would have priority over an Electronic Complex Order in the Consolidated Book at the same price.¹¹

Non-marketable Electronic Complex Orders will rest in the Consolidated Book. The CME will monitor interest in the leg markets, and will execute a resting Electronic Complex Order against new order(s) or quote(s) entered into the Consolidated Book if the new order(s) or quote(s) can execute the resting Electronic Complex Order in full or in a permissible ratio.¹²

NYSE Amex market participants will be able to view Electronic Complex Orders in the Consolidated Book via an electronic interface and may submit Electronic Complex Orders to the CME to trade against orders in the Consolidated Book.¹³ A Specialist will not have a guaranteed allocation when an Electronic Complex Order executes against either the Specialist's Electronic Complex Order or its interest in the leg market.¹⁴

Electronic Complex Orders may be executed in one-cent increments

regardless of the minimum price variation otherwise applicable to the individual legs of the order.¹⁵ In addition, the price of at least one leg of an Electronic Complex Order must trade at a price that is better than the corresponding price of all customer bids or offers in the Consolidated Book for the same series by at least one standard trading increment, as defined in NYSE Amex Rule 960NY.¹⁶

Stock/option Orders with one options leg that are submitted to the CME will trade in the following sequence: (1) Against other Stock/option Orders in the Consolidated Book, using public customer priority and then time priority; (2) against individual orders or quotes, provided that the Stock/option Order can be executed in full or in a permissible ratio; and (3) against orders or quotes submitted by market participants.¹⁷ Notwithstanding these priority provisions, the option leg of a Stock/option Order will not be executed at NYSE Amex's best bid or offer in that series if one or more public customer orders are resting at that price unless the options leg trades with such public customer order(s).¹⁸ A Stock/option Order with more than one options leg will be handled in the same manner as a Stock/option Order with a single option leg, except that the requirement to trade with existing public customer interest at NYSE Amex's best bid or offer will apply only if there are public customer orders at NYSE Amex's best bid or offer for each of the legs of the order.¹⁹

III. Discussion

After careful review, 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.²⁰ In particular, the Commission finds that the proposal, as amended, is consistent with Section 6(b)(5) of the Act,²¹ which requires, in part, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and

¹⁵ See NYSE Amex Rule 980NY, Commentary .01.

¹⁶ See NYSE Amex Rule 980NY, Commentary .02.

¹⁷ See NYSE Amex Rule 980NY, Commentary .03(c).

¹⁸ See NYSE Amex Rule 980NY, Commentary .03(b).

¹⁹ See NYSE Amex Rule 980NY, Commentary .03(d).

²⁰ In approving the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

²¹ 15 U.S.C. 78f(b)(5).

⁷ See NYSE Amex Rule 980NY(a).

⁸ *Id.*

⁹ See NYSE Amex Rule 980NY(b).

¹⁰ See NYSE Amex Rule 980NY(c)(i).

¹¹ *Id.*

¹² See NYSE Amex Rule 980NY(c)(ii).

¹³ See NYSE Amex Rule 980NY(c)(iii).

¹⁴ See NYSE Amex Rules 980NY(c)(i) and (iii).

perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

As discussed above, all NYSE Amex market participants will be able to view Electronic Complex Orders in the Consolidated Book and submit Electronic Complex Orders to the CME to trade against orders in the Consolidated Book. Accordingly, the Commission believes that the proposal could increase the transparency of Electronic Complex Orders and facilitate their execution.

The proposal provides customer Electronic Complex Orders with priority over non-customer Electronic Complex Orders at the same price,²² and also preserves the priority of customer orders in the individual leg markets. In this regard, if individual customer orders in the Consolidated Book can execute an incoming Electronic Complex Order in full, or in a permissible ratio, at the same total net debit or credit as an Electronic Complex Order in the Consolidated Book, the individual customer orders will have priority.²³ Further, when an Electronic Complex Order is executed, the price of at least one leg of the order must trade at a price that is better than the corresponding price of all customer bids or offers in the Consolidated Book for that series by at least one standard trading increment.²⁴

The Commission believes that it is reasonable and consistent with the Act for NYSE Amex not to provide a guaranteed allocation to Specialists, as described above, because Specialists do not have quoting obligations for complex strategies.

Finally, the Commission believes that the proposal could facilitate the execution of stock-option orders on the Amex by providing for the electronic handling and execution of these orders, which currently must be handled manually. The Commission notes that proposal provides for the execution of stock-option orders submitted to the CME in a manner that is consistent with the Amex's existing priority rules for stock-option orders, which provide the options leg of a stock-option order with priority over bids (offers) in the trading crowd at the same price, but not over public customer orders in the Consolidated Book.²⁵ Accordingly, the

Commission finds that the NYSE Amex rules concerning the execution of Stock/option Orders submitted to the CME are consistent with the Act.

IV. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 1, prior to the thirtieth day after publication for comment in the **Federal Register**. Amendment No. 1, which inserts a reference to "quotes" that was omitted erroneously and replaces an incorrect cross-reference in the proposed rule text, help to clarify the proposed rule change and do not differ materially from the proposal as published in the **Federal Register** on July 19, 2009. Accordingly, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,²⁶ to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1, including whether Amendment No. 1 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 Number SR-NYSEAmex-2009-42 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR-NYSEAmex-2009-42. 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

CBOE Rule 6.53C, Commentary .06. *See also* Securities Exchange Act Release Nos. 56903 (December 5, 2007), 72 FR 70356 (December 11, 2007) (File No. SR-CBOE-2007-68) (order approving rules relating to the electronic handling and execution of stock-option orders); and 59585 (March 17, 2009), 74 FR 12416 (March 24, 2009) (File No. SR-CBOE-2009-017) (notice of filing and immediate effectiveness of rules allowing conversions and reversals to be routed to the electronic complex order book).

²⁶ 15 U.S.C. 78s(b)(2).

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 a.m. and 3 p.m. Copies of the 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-NYSEAmex-2009-42 and should be submitted on or before September 17, 2009.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,²⁷ that the proposed rule change (SR-NYSEAmex-2009-42), as modified by Amendment No. 1, is approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁸

Florence E. Harmon,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60556; File No. SR-CBOE-2009-061]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Clarify the Definition of "Narrow-Based Index"

August 21, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the

²⁷ 15 U.S.C. 78s(b)(2).

²⁸ 17 CFR 200.30-3(a)(12).

²² See NYSE Amex Rule 980NY(b).

²³ See NYSE Amex Rule 980NY(c)(i).

²⁴ See NYSE Amex Rule 980NY, Commentary .02.

²⁵ See NYSE Amex Rule 963NY(d). The Commission notes that the proposed rules governing the handling of Stock/option Orders are substantially similar to rules adopted by the Chicago Board Options Exchange, Incorporated, which the Commission reviewed previously. *See*