IV. Conclusion

It is therefore ordered, pursuant to Section 11A of the Act [13] and paragraph (c)(2) of Rule 11Aa3–2 [14] thereunder, that the proposed 4th Amendment to the CTA Plan and the proposed 2nd Amendment to the CQ Plan are approved on a permanent basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–4093 Filed 2–19–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47345; File No. SR–Amex–2002–89]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the American Stock Exchange LLC Relating to Crossing Procedures for Clean Agency Crosses

February 11, 2003.

On November 5, 2002, the American Stock Exchange LLC (''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 proposed rule change to amend Amex Rule 126(g), Commentary .02 to provide that orders of 5,000 shares or more for the account of a non-member organization may be crossed at a price at or within the bid or offer without being broken up by a specialist or Registered Trader acting as principal. The Amex filed an amendment to the proposed rule change on December 23, 2002.[3] The proposed rule change, as amended, was published for notice and comment in the **Federal Register** on January 7, 2003.[4] The Commission received no comments on the proposed rule change.

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 [5] and, in particular, the requirements of section 6 of the Act [6] and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with Section 6(b)(5) of the Act [7] in that the Rule 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, 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; and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Commission believes that the proposed rule change, while eliminating the opportunity for specialists and Registered Traders to effect a proprietary transaction to provide price improvement to one side of a clean cross or the other, preserves auction market principles by providing the possibility of price improvement (because members must follow Amex Rule 151 crossing procedures), and by requiring that members trade with other market interest having time priority at that price before trading with any part of the cross transaction. In addition, the Commission believes that the proposal will enhance competition among markets in the execution of agency crosses.

It is therefore ordered, pursuant to section 19(b)(2) of the Act [8], that the proposed rule change, as amended (SR–AMEX–2002–89), be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–4045 Filed 2–19–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47346; File No. SR–CBOE–2002–26]

Self Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 to the Proposed Rule Change Increasing Position and Exercise Limits for Options on the DIAMONDS Trust

February 11, 2003.

I. Introduction

On May 20, 2002, the Chicago Board Options Exchange, Inc. (''CBOE'') 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 proposed rule change to increase position and exercise limits for options on the DIAMONDS Trust (''DIA''). The proposed rule change was published for comment in the **Federal Register** on November 6, 2002.[3] The Commission received no comments on the proposal. On February 4, 2003, the CBOE filed Amendment No. 1 to the proposed rule change.[4] This order approves the proposed rule change, and notices and grants accelerated approval to Amendment No. 1 to the proposed rule change.

II. Description of the Proposal

The CBOE proposes to increase position and exercise limits for options on the DIA from 75,000 to 300,000 contracts on the same side of the market. Consistent with the reporting requirement for QQQ options, the Exchange will require that each member or member organization that maintains a position on the same side of the market in excess of 10,000 contracts in the DIA option class, for its own account or for the account of a customer report certain information. This data would include, but would not be limited to, the option position, whether

---

[13] 15 U.S.C. 78k–1.

[14] 17 CFR 240.11Aa3–2(c)(2).

[15] 17 CFR 200.30–3(a)(27).

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

[2] 17 CFR 240.19b–4.

[3] *See* letter from Michael Cavalier, Associate General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation, SEC, dated December 20, 2002, and enclosures (''Amendment No. 1''). Amendment No. 1 corrected a typographical error in the text of the proposed amendment.

[4] Securities Exchange Act Release No. 47113 (December 31, 2002), 68 FR 818.

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

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(2). proposed rule change, as amended (SR–Amex-2002–89), be, and hereby is, approved.

[9] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 46743 (October 30, 2002), 67 FR 67673 (November 6, 2002).

[4] *See* Letter from Christopher R. Hill, Attorney II, Legal Division, CBOE, to Nancy Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated February 3, 2003 (''Amendment No. 1''). In Amendment No. 1, the CBOE corrected erroneous text in CBOE Rule 4.13(b) to maintain the reporting requirement level for DIA options specified in CBOE Rule 4.13 at 10,000 contracts. Amendment No. 1 also corrected similar references to the reporting requirement level that were contained in the SEC Rule 19b–4 filing.

such position is hedged and if so, a description of the hedge and if applicable, the collateral used to carry the position. Exchange market-makers (including DPMs) would continue to be exempt from this reporting requirement as market-maker information can be accessed through the Exchange's market surveillance systems. In addition, the general reporting requirement for customer accounts that maintain a position in excess of 200 contracts will remain at this level for DIA options.[5]

III. Discussion

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[6] and, in particular, the requirements of section 6 of the Act[7] and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with section 6(b)(5) of the Act[8] because 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, in general, to protect investors and the public interest.

Position and exercise limits serve as a regulatory tool designed to address potential manipulative schemes and adverse market impact surrounding the use of options. In the past, the Commission has stated that:

> Since the inception of standardized options trading, the options exchanges have had rules imposing limits on the aggregate number of options contracts that a member or customer could hold or exercise. These rules are intended to prevent the establishment of 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 and for corners or squeezes of the underlying market. In addition such limits serve to reduce the possibility for disruption of the options market itself, especially in illiquid options classes.[9]

In general, the Commission has taken a gradual, evolutionary approach toward expansion of position and exercise limits. The Commission has been careful to balance two competing concerns when considering the appropriate level at which to set position and exercise limits. The Commission has recognized that the limits must be sufficient to prevent investors from disrupting the market in the component securities comprising an index. These same concerns exist for the underlying portfolio securities held by exchange-traded fund shares, which track indexes such as the DIA. At the same time, the Commission has determined that limits must not be established at levels that are so low as to discourage participation in the options market by institutions and other investors with substantial hedging needs or to prevent specialists and market makers from adequately meeting their obligations to maintain a fair and orderly market.[10]

The Commission has carefully considered the CBOE's proposal to increase position and exercise limits for DIA options. At the outset, the Commission notes that it still believes the fundamental purpose of position and exercise limits are being served by their existence. However, given the surveillance capabilities of the Exchange 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. Specifically, the Commission believes that it is appropriate to increase position and exercise limits from 75,000 contracts to 300,000 contracts for DIA options for several reasons.

First, the Commission 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. In this regard, the CBOE notes that DIA, based on the Dow Jones Industrial Average, is among the most actively traded exchange-traded funds, averaging 4.5 million shares per day during the first six months of 2002. Moreover, the components comprising the fund are themselves among the most actively traded and widely held securities listed in the U.S. These factors provide support for higher limits for the DIA options and differentiate them from other equity options (including options on other exchange-traded fund shares).

Second, the Commission notes that current margin and risk-based haircut methodologies serve to limit the size of positions maintained by any one account by increasing the margin and/or capital that a member must maintain for a large position held by itself or by its customer. Further, the CBOE, under CBOE Rules 4.13 and 12.10, may impose additional margin on options positions if it determines that this is warranted. The Commission believes that these financial requirements should help to address concerns that a member or its customer may try to maintain an inordinately large unhedged position in DIA options and will help to reduce risks if such a position is established.

Finally, the Commission believes that the reporting requirements imposed by the Exchange under CBOE Rule 4.13 will help protect against potential manipulation. The Exchange will require that each member or member organization that maintains a position on the same side of the market in excess of 10,000 contracts in the DIA option class, for its own account or for the account of a customer report certain information. This data would include, but would not be limited to, the option position, whether such position is hedged and if so, a description of the hedge and if applicable, the collateral used to carry the position. Exchange market-makers (including DPMs) would continue to be exempt from this reporting requirement as market-maker information can be accessed through the Exchange's market surveillance systems. In addition, the general reporting requirement for customer accounts that maintain a position in excess of 200 contracts will remain at this level for DIA options.[11] This information should help the CBOE to monitor accounts and determine whether it is necessary to impose additional margin for under-hedged positions, as provided under its rules.

In summary, the financial and reporting requirements noted above should allow the Exchange to detect and deter trading abuses arising from the increased position and exercise limits, and will also allow the Exchange to monitor large positions in order to identify instances of potential risk and to assess additional margin and/or capital charges, if deemed necessary. These requirements, coupled with the special trading characteristics of the DIA options and the underlying DIA noted above, warrant approval of the Exchange's proposal.[12]

---

[5] *See* CBOE Rule 4.13(a).

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

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(5).

[9] *See* Securities Exchange Act Release No. 39489 (December 24, 1997), 63 FR 276 (January 5, 1998).

[10] *Id.*

[11] *See* CBOE Rule 4.13(a).

[12] Of course, the Commission expects that CBOE will take prompt action, including timely communication with the Commission and other marketplace self-regulatory organizations responsible for oversight of trading in the

Continued

The Commission finds good cause for approving Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. Amendment No. 1 corrects an error in the proposed rule language and in the Rule 19b–4 rule filing to affirm that the reporting requirement level for DIA options will be set at 10,000 contracts. This is the current level under CBOE rules and remains unchanged. The Commission, therefore, believes that there is good cause to grant accelerated approval of Amendment No. 1, consistent with Section 6(b)(5) of the Act [13] and section 19(b)[14] of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1, including whether it is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–CBOE–2002–26 and should be submitted by March 13, 2003.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act [15], that the proposed rule change (SR–CBOE–2002–26), as amended, be and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–4046 Filed 2–19–03; 8:45 am]

BILLING CODE 8010–01–P

underlying DIA, should any unanticipated adverse market effects develop due to the increased limits.

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78s(b).

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

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47353; File No. SR–NYSE–2002–58]

Self-Regulatory Organizations; New York Stock Exchange; Order Approving Proposed Rule Change by New York Stock Exchange To Amend the Exchange's Automatic Execution Facility (NYSE Direct+)

February 12, 2003.

On November 1, 2002, the New York Stock Exchange (''NYSE'' 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 proposed rule change to amend NYSE Rule 1005 to permit entry of limit orders up to 1,099 shares within 30 seconds for an account in which the same person has an interest, provided that the orders are entered from different terminals and that the member or member organization responsible for the entry of the orders to the trading floor (''Floor'') has procedures to monitor compliance with the separate terminal requirement. On December 10, 2002, the rule proposal was published for comment in the **Federal Register**.[3] The Commission received 103 comments generally in favor of the proposed rule change. This order approves the proposed rule.

I. Description of the Proposed Rule Change

The NYSE Direct+ pilot [4] provides for the automatic execution of limit orders of 1099 shares or less (known as an ''NX order'' or auto ex order) against trading interest reflected in the Exchange's published quotation. It is not mandatory that all limit orders of 1099 shares be entered as NX orders; rather, the member organization entering the order, or its customer if enabled by the member organization, can choose to enter an NX order when such member organization (or customer) believes that the speed and certainty of an execution at the Exchange's published bid or offer price is in its customer's best interest.

NYSE Rule 1005 currently provides that an NX order for any account in which the same person is directly or indirectly interested may only be entered at 30 second intervals. The restriction against the same customer entering an order within 30 seconds focuses on the identity of the ultimate beneficial owner of an account. Thus, an order cannot be entered for the same beneficial owner within 30 seconds. According to the NYSE, the purpose of this restriction is to limit the ability of a trader to circumvent the restriction on order size by breaking a large order into smaller components and repetitively entering them to exhaust liquidity at the published bid or offer price. The restriction in NYSE Rule 1005 applies across an entire firm, even if separate traders are making independent decisions with respect to an account in which the firm has an interest.

The Exchange is proposing to amend NYSE Rule 1005 to permit entry of NX orders within 30 seconds for an account in which the same person has an interest, provided that the orders are entered from different terminals and that the member or member organization responsible for the entry of the orders to the Floor has procedures to monitor compliance with the separate terminal requirement. Such procedures, at a minimum, must require member organization compliance departments to review patterns of order entry from individual terminals on a periodic basis to ensure compliance with the 30 second requirement.

I. Summary of Comments

The Commission received 103 comment letters generally supporting the proposed amendment to NYSE Direct +.[5] Many commenters stated that

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 46943 (December 4, 2002), 67 FR 75893.

[4] See Securities Exchange Act Release No. 43767 (December 22, 2000), 66 FR 834 (January 4, 2001) (SR–NYSE–2000–18) (approving the NYSE Direct + pilot). The one-year pilot was subsequently extended for another year in Securities Exchange Act Release No. 45331 (January 24, 2002), 67 FR 5024 (February 1, 2002) (SR–NYSE–2001–50). The pilot was recently extended through December 23, 2003. See Securities Exchange Act Release No. 46906 (November 25, 2002) 67 FR 72260 (December 4, 2002) (SR–NYSE–2002–47). The proposed rule change, if approved, would be part of the pilot and, thus, would expire on December 23, 2003 unless extended. Telephone conversation between Donald Siemer, Director, Market Surveillance, NYSE, and Sonia Patton, Special Counsel, Division of Market Regulation, Commission, December 3, 2002.

[5] A number of letters were from registered representatives and registered principals of Heartland Securities. These letters are identified individually. *See* letters to Jonathan G. Katz, Secretary, Commission, from Christopher Andrews, dated November 19, 2002 (''Andrews Letter''); Christopher Ball, undated (''Ball Letter''); Dror Ben-Aharon, undated (''Ben-Aharon Letter''); Alexander Benetti, dated November 19, 2002 (''Benetti Letter''); Patrick K. Blackburn, Executive Vice President, ABN-AMRO, dated December 23, 2002 (''ABN–AMRO Letter''); Eliav Bock, dated November 19, 2002 (''Bock Letter''); Arthur Brachowski, dated November 20, 2002 (''Brachowski Letter''); Thomas Bradshaw, undated (''Bradshaw Letter''); Blake C. Byczek, dated November 19, 2002 (''Byczek Letter''); Richard Cammarata, undated (''Cammarata Letter''); Coreina