

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-57738; File No. SR-Amex-2007-129)

April 29, 2008

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of Proposed Rule Change as Modified by Amendment No. 1 Relating to an Exchange Member's Conduct in Doing Business with the Public

I. Introduction

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹, as amended, and Rule 19b-4 thereunder,² on November 29, 2007, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change relating to the Exchange's rules governing doing business with the public. On March 19, 2008, the Commission issued a release noticing the proposed rule change, which was published for comment in the Federal Register on March 25, 2008.³ The comment period expired on April 15, 2008. The Commission did not receive any comment letters in response to the proposed rule change. On April 17, 2008, the Exchange filed Amendment No. 1 to make a technical edit to the proposed rule change.⁴ This order provides notice of the proposed rule change, as modified by Amendment No. 1, and approves the proposed rule change as amended on an accelerated basis.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 57527 (Mar. 19, 2008), 73 FR 15810 (Mar. 25, 2008).

⁴ Amendment No. 1 corrects an internal cross-reference and does not contain any substantive modifications to the rule text.

II. Description of Amex Proposal

Amex proposes to amend certain Amex Rules that govern an Exchange member's conduct in doing business with the public. Specifically, the proposed rule change would require member organizations (also referred to as "member firms" or "firms") to integrate the responsibility for supervision of their public customer options business into their overall supervisory and compliance programs. In addition, the proposal would require member firms to strengthen their supervisory procedures and internal controls as related to their public customer options business.

A. Integration of Options Supervision

The purpose of the proposed rule change is to create a supervisory structure for options that is similar to that required by New York Stock Exchange, LLC ("NYSE) Rule 342 and National Association of Securities Dealers, Inc. ("NASD") Rule 3010.⁵ The proposed rule change would also conform Amex rules to those of the Chicago Board of Options Exchange ("CBOE") by eliminating the requirement that a member firm, qualified to do a public customer business in options, designate a single person to act as a Senior Registered Options Principal ("SROP") for the member organization and that each such member organization designate a specific individual as a Compliance Registered Options Principal ("CROP").⁶ The Exchange proposes to eliminate the SROP and CROP supervisory categories, allowing member firms to supervise their options activities

⁵ On July 26, 2007, the Commission approved a proposed rule change filed by NASD to amend NASD's Certificate of Incorporation to reflect its name change to Financial Industry Regulatory Authority, Inc., or FINRA, in connection with the consolidation of the member firm regulatory functions of NASD and NYSE Regulation, Inc. See Securities Exchange Act Release No. 56146 (July 26, 2007), 72 FR 42190 (Aug. 1, 2007). The FINRA rule book currently consists of both NASD rules and certain NYSE rules that FINRA has incorporated.

⁶ See Securities Exchange Act Release No. 56492 (Sept. 21, 2007), 72 FR 54952 (Sept. 27, 2007) (SR-CBOE-2007-106).

through their overall supervisory and compliance programs that monitor all other securities products.

The SROP concept was first introduced during the early years of development of the listed options market. Previously under Amex rules, member firms were required to designate one or more persons qualified as Registered Options Principals (“ROPs”) to have supervisory responsibilities with respect to the firms’ options business. As the number of ROPs at larger firms began to increase, the Amex imposed an additional requirement that member firms designate one of their ROPs as the SROP. This was intended to eliminate confusion as to where the compliance and supervisory responsibilities lay by centralizing in a single supervisory officer overall responsibility for the supervision of a firm’s options activities.⁷ Subsequently, following the recommendation of the Special Study of the Options Market,⁸ the Amex and the other options exchanges required firms to designate a CROP to be responsible for each firm’s overall compliance program with respect to its options activities. The CROP could be the same person designated as a SROP, but while the CROP generally was not permitted to have sales functions in the firm, whereas the SROP was not so restricted.

Since the SROP and CROP requirements were first imposed, the supervisory function with respect to options activities of most securities firms has been integrated into their supervisory function for securities activities overall. This not only reflects the maturity of the options market, but also recognizes the ways in which the uses of options themselves have become more integrated with other securities in the implementation of particular strategies. By permitting supervision of a firm’s options activities to be

⁷ Report of the Special Study of the Options Market, p. 316 note 11 (Dec. 22, 1978).

⁸ Id. at 335.

handled in the same manner as the supervision of its securities and futures activities, the proposed rule change would ensure that supervisory responsibility over each segment of a firm's business is assigned to the best qualified persons in the firm, thereby enhancing the overall quality of supervision and compliance.

The proposed rule change would allow firms the flexibility to assign such supervisory and compliance responsibilities, which formerly resided with the SROP and/or CROP, to more than one individual. For example, the proposed rule change would permit a member firm to designate certain ROPs to be responsible for a variety of supervisory compliance functions such as approving acceptance of discretionary accounts,⁹ approving communications to customers,¹⁰ and allowing exceptions to a member firm's suitability standards for trading uncovered short options.¹¹ A firm would be likely to do this in instances where the firm believes it advantageous to do so to enhance its supervisory or compliance structure. Typically, a firm may also wish to divide these functions on the basis of geographic region or functional considerations. Amex Rule 920 would be amended to clarify the qualification requirements of individuals designated as ROPs and also to specify the registration requirements of individuals who accept orders from non-broker-dealer customers.

With respect to discretionary accounts, the proposal would require acceptance of such accounts to be assigned to individuals who are qualified ROPs.¹² Further, the proposal would require that the individual who reviews the acceptance of a discretionary account (who is an individual other than the ROP who accepted the account as required

⁹ See proposed Amex Rule 924(a) and Commentary .05 to Rule 920.

¹⁰ See proposed Amex Rule 991(b).

¹¹ See proposed Amex Rule 921(g)(3).

¹² See proposed Amex Rule 924(a) and Commentary .04 to Rule 920.

by Amex Rule 924(a)) to be Series 4 qualified because such a review is not a routine sales supervisory function and requires more in-depth knowledge of options than that covered by the Series 9/10 examination.¹³ The proposed rule change would eliminate the requirement that discretionary options orders be approved on the day of entry by a ROP (with one exception as discussed below) because such requirement is not consistent with the use of supervisory tools in computerized format or exception reports generated after the close of trading day. No similar requirement exists for supervision of other securities accounts that are handled on a discretionary basis.¹⁴ Discretionary orders would be required to be reviewed in accordance with a firm's written supervisory procedures. Amex believes that the proposed rule change would ensure that supervisory responsibilities are assigned to specific qualified individuals, thereby enhancing the quality of supervision.

The proposed rule change would revise Amex Rule 924 by adding as Commentary .01, a requirement that any firm that does not utilize computerized surveillance tools for the frequent and appropriate review of discretionary account activity must establish and implement procedures to require ROP-qualified individuals ("Qualified Individuals") who have been designated to review discretionary accounts to approve and initial each discretionary order on the day entered. The Exchange believes that any firm that does not utilize computerized surveillance tools to monitor discretionary account activity should continue to be required to perform the daily manual review of discretionary orders.

¹³ See supra note 9.

¹⁴ See, e.g., NYSE Rule 408.

Under the proposed rule change, firms would continue to be required to designate Qualified Individuals to provide frequent appropriate supervisory review of options discretionary accounts.¹⁵ Qualified Individuals would review the accounts to determine whether the ROP accepting the account had a reasonable basis for believing that the customer was able to understand and bear the risks of the proposed strategies or transactions. This requirement would provide an additional level of supervisory audit over options discretionary accounts that does not exist for other securities discretionary accounts.

In addition, the proposed change to Amex Rule 922 would require that each member organization provide for the preparation and submission of a written annual report to one or more of its control persons or, if the firm has no control person, to the audit committee of its board of directors or its equivalent group (collectively referred to as, “Control Person”). The firm would be required to submit the report to the Exchange and to its Control Person by April 1st of each year. The firm would be required to detail in the report its supervision and compliance effort, including its options compliance program, during the preceding year and the adequacy of its ongoing compliance processes and procedures.¹⁶

Proposed Amex Rule 922(g) would further provide that a member organization that specifically includes its options compliance program in a report that complies with substantially similar NYSE and NASD rules will be deemed to have satisfied the requirements of Amex Rules 922(g) and 922(h).

¹⁵ See proposed Amex Rule 924(a).

¹⁶ See proposed Amex Rules 922(g) and 922(h), which are modeled after NYSE Rules 342.30 and 354, respectively.

Where appropriate, the proposed rule changes would delete references to SROP and CROP in Amex Rules 421, 920, 921, 922, 924 and 991.

Although the proposed rule change would eliminate entirely the positions and titles of SROP and CROP, firms would still be required to designate a single general partner or executive officer to assume overall authority and responsibility for internal supervision, control of the organization and compliance with securities laws and regulations.¹⁷ A firm would also be required to designate specific qualified individuals as having supervisory or compliance responsibilities over each aspect of the firm's options activities and to set forth the names and titles of these individuals in its written supervisory procedures.¹⁸

The Exchange is a party to an options sales practice compliance plan, amended on March 26, 2007, entered into pursuant to Section 17(d) of the Act and Rule 17d-2, promulgated thereunder.¹⁹ For Exchange members that are also FINRA members, the amended plan allocates responsibility for examination and enforcement of members' compliance with options sales practice rules primarily to FINRA (the "Options 17d-2 Plan"). For non-FINRA members, the Options 17d-2 Plan provides that the exchange which is the Designated Examining Authority ("DEA") pursuant to Rule 17d-1 under the Act, shall perform the regulatory responsibilities designated to it in the Options 17d-2 Plan. Under these provisions the Amex currently has responsibility for examination and enforcement of options sales practice rules as to three members (one of which is a dual member of the Philadelphia Stock Exchange and Amex and two Amex only members).

¹⁷ See proposed Amex Rule 922(a).

¹⁸ See proposed Amex Rule 922(a).

¹⁹ Securities Exchange Act Release No. 55532 (Mar. 26, 2007), 72 FR 15729 (Apr. 2, 2007).

FINRA will be primarily responsible for options sales practice examination and enforcement as to other dual members. In connection with the approval of these proposed changes, the Exchange intends to closely review written supervisory and compliance procedures of firms, for which it is the DEA, in the course of its routine examinations of member firms to ensure that supervisory and compliance responsibilities are adequately defined.

The Exchange believes the proposed rule changes will increase accountability and eliminate impractical and unrealistic supervisory standards applicable solely to listed options. The Exchange believes that the proposed rule changes are appropriate and will not materially alter the supervisory operations of firms.

B. Supervisory Procedures and Internal Controls

The Exchange also proposes to amend certain rules to strengthen member firms' supervisory procedures and internal controls relating to their public customer options business. The proposed rule changes discussed below are modeled after NYSE and NASD rules approved by the Commission in 2004.²⁰ The Exchange believes this proposal is appropriate and consistent with the proposal discussed above to integrate the responsibility for supervision of a member firm's public customer options business into its overall supervisory and compliance program.

The proposed revisions to Amex Rule 922(a)(3) would require member firms to develop and implement written policies and procedures reasonably designed to supervise sales managers and other supervisory personnel who service customer options accounts.²¹

²⁰ See Securities Exchange Act Release Nos. 49882 (June 17, 2004), 69 FR 35108 (June 23, 2004) (SR-NYSE-2002-36) (approval order), 49883 (June 17, 2004), 69 FR 35092 (June 23, 2004) (SR-NASD-2002-162) (approval order).

²¹ Proposed Amex Rule 922(a)(3) is modeled after NYSE Rule 342.19.

This would encompass branch office managers, sales managers, regional/district sales managers, or any person performing a similar supervisory function. Such policies and procedures are expected to encompass all options sales-related activities. Proposed Amex Rule 922(a)(3)(i) would require that supervisory reviews of producing sales managers be conducted by a qualified ROP who is either senior to, or otherwise “independent of”, the producing manager under review.²² This provision is intended to ensure that all options sales activity of a producing manager is monitored for compliance with applicable regulatory requirements by persons who do not have a personal interest in such activity.

Proposed Amex Rule 922(a)(3)(ii) would provide an exception for firms so limited in size and resources that there is no qualified person senior to, or otherwise independent of, the producing manager to conduct the review. In this situation, the review would be conducted by a qualified ROP to the extent practicable. Under proposed Amex Rule 922(a)(3)(iii), a member relying on the limited size and resources exception must document the factors used to determine that compliance with each of the “senior” or “otherwise independent” standards of proposed Amex Rule 922(a)(3)(i) is not possible, and that the required supervisory systems and procedures in place with respect to any producing manager comply with the provisions of proposed Amex Rule 922(a)(3)(i) to the extent practicable.²³

²² An “otherwise independent” person is defined in proposed Amex Rule 922(a)(3)(i).

²³ Proposed Amex Rule 922(a)(3)(iv) would provide that a member organization that complies with the NYSE or NASD rules that are substantially similar to the requirements in Rules 922(a)(3)(i), (a)(3)(ii) and (a)(3)(iii) will be deemed to have met such requirements.

Proposed Amex Rule 922(c)(i) would require member organizations to develop and maintain adequate controls over each of their business activities. The proposed rule would require such controls to include the establishment of procedures to independently verify and test the supervisory systems and procedures for those business activities. A firm would be required to include in the annual report prepared pursuant to proposed Amex Rule 922(g), a review of the firm's efforts in this regard, including a summary of the tests conducted and significant exceptions identified. The Exchange believes proposed Amex Rule 922(c)(i) would enhance the overall quality of each member organization's supervision and compliance function.²⁴

Paragraph (d) of proposed Amex Rule 922 would establish requirements for branch office inspections similar to the requirements of NYSE Rule 342.24. Specifically Amex Rule 922(d) would require a member organization to inspect, at least annually, each supervisory branch office and inspect each non-supervisory branch office at least once every three years.²⁵ The proposed rule would further require persons who conduct a firm's annual branch office inspection to be independent of the direct supervision or control of the branch office (i.e., not the branch office manager, or any person who directly or indirectly reports to such manager, or any person to whom such manager directly reports). The Exchange believes that requiring branch office inspections to be conducted by someone who has no significant financial interest in the success of a branch office should lead to more objective and vigorous inspections.

²⁴ Proposed Amex Rule 922(c)(i) is modeled after NYSE Rule 342.23. Paragraph (c)(ii) of proposed Amex Rule 922 would provide that a member organization that complies with NYSE or NASD rules that are substantially similar to the requirements in paragraph (c)(i) of proposed Amex Rule 922 will be deemed to have met such requirements.

²⁵ Proposed Amex Rules 922(d)(1)(i) and (ii) would provide members with two exceptions from the annual supervisory branch office inspection requirement.

Under proposed Amex Rule 922(e), any firm seeking an exemption, pursuant to Rule 922(d)(1)(ii), from the annual branch office inspection requirement would be required to submit to the Exchange written policies and procedures for systematic risk-based surveillance of its branch offices, as defined in Rule 922(e). Proposed Amex Rule 922(f) would require the annual branch office inspection programs to include, at a minimum, testing and verification of specified internal controls.²⁶ Proposed Amex Rule 922(d)(3) would provide that a firm that complies with the requirements of NASD or the NYSE that are substantially similar to the requirements of Rules 922(d), (e) and (f) will be deemed to have met such requirements. The Exchange also proposes to amend Commentary .04 of Amex Rule 922 to define “branch office” in a way that is substantially similar to the definition of branch office in NYSE Rule 342.10.

Proposed Amex Rule 922(g)(4) would require a firm to designate a Chief Compliance Officer (CCO). Proposed Rule 922(g)(5) would require each firm’s Chief Executive Officer (CEO), or equivalent, to certify annually that the member organization has in place processes to (1) establish and maintain policies and procedures reasonably designed to achieve compliance with applicable Exchange rules and federal securities laws and regulations, (2) modify such policies and procedures as business, regulatory, and legislative changes and events dictate, and (3) test the effectiveness of such policies and procedures on a regular basis, the timing of which is reasonable designed to ensure continuing compliance with Exchange rules and federal securities laws and regulations.

Proposed Amex Rule 922(g)(5) would also require the CEO to attest (1) that he or she has conducted one or more meetings with the CCO in the preceding 12 months to

²⁶ Proposed Rules 922(e) and (f) are modeled after NYSE Rules 342.25 and 342.26, respectively.

discuss the compliance processes in proposed Rule 922(g)(5)(i), (2) that he or she has consulted with the CCO and other officers to the extent necessary to attest to the statements in the certification, and (3) that the compliance processes are evidenced in a report, reviewed by the CEO, CCO and such other officers as the member firm deems necessary to make the certification, that is provided to the member firm's board of directors and audit committee (if such committee exists).²⁷

Under proposed Amex Rule 922(b)(2), a member, upon a customer's written instructions, may hold mail for a customer who will not be at his or her usual address for no longer than two months if the customer is on vacation or traveling, or three months if the customer is going abroad. This provision would help ensure that members that hold mail for customers who are away from their usual addresses do so only pursuant to the customer's written instructions and for a specified, relatively short period of time.²⁸

Proposed Amex Rule 922(b)(3) would require that before a customer options order is executed, the account name or designation to be placed upon the memorandum for each transaction. Only a Qualified Individual would be permitted to approve any changes in account names or designations. The ROP would be required to document the essential facts relied upon in approving the changes and maintain the record in an easily accessible place. A member would be required to preserve any documentation which provides for an account designation change for a period of not less than three years, with the documentation preserved for the first two years in an easily accessible place, as the term "easily accessible place" is used in Rule 17a-4 of the Act.²⁹ The Exchange believes

²⁷ Proposed Amex Rule 922(g)(5) is modeled after NASD Rule 3013 and NYSE Rule 342.30(e).

²⁸ Proposed Amex Rule 922(b)(2) is modeled after NASD Rule 3110(i).

²⁹ 17 CFR 240.17a-4.

the proposed rule would help to protect account name and designation information from possible fraudulent activity.³⁰

Amex Rule 924(d) allows firms to exercise time and price discretion on orders for the purchase or sale of a definite number of options contracts in a specified security. The Exchange proposes to amend Amex Rule 924(d) to limit the duration of this discretionary authority to the day it is granted, absent written authorization to the contrary. The proposed rule would require any exercise of time and price discretion to be reflected on the customer order ticket. The proposed one-day limitation would not apply to time and price discretion exercised for orders effected with or for an institutional account (as defined in Rule 924(d)) pursuant to valid Good-Till-Cancelled instructions issued on a “not held” basis. The Exchange believes that investors will receive greater protection by clarifying the time such discretionary orders remain pending.³¹

III. Discussion and Commission Findings

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.³² In particular, the Commission finds the proposed rule change, as amended, would integrate the supervision and compliance functions relating to member organizations’ public customer options activities into the overall supervisory structure of a member organization, thereby eliminating any uncertainty over where supervisory responsibility lies. In addition, the proposed rule change would foster the strengthening

³⁰ Proposed Amex Rule 922(b)(3) is modeled after NASD 3110(j).

³¹ Proposed Amex Rule 924(d) is modeled after NASD Rule 2510(d)(1).

³² In approving this rule change, as amended, the Commission notes that it has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

of members' and member organizations' internal controls and supervisory systems. As such, the Commission finds the proposal to be consistent with the objectives of Section 6(b)(5) of the Act,³³ in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and practices, and in general, to protect investors and the public interest.

The Commission also finds good cause for approving Amendment No.1 to the proposed rule change prior to the 30th day after its publication in the Federal Register. Amendment No. 1 corrects an internal cross-reference and does not contain any substantive modifications to the rule text. The Commission finds that it is in the public interest to approve the proposed rule change as soon as possible to expedite its implementation. Accordingly, the Commission believes good cause exists, consistent with Sections 6(b)(5) and 19(b) of the Act to approve Amendment No. 1 to the proposed rule change on an accelerated basis.

IV. Solicitation of Comments Concerning Amendment No. 1

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-Amex-2007-129 on the subject line.

³³ 15 U.S.C. 78f(b)(5).

Paper comments:

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

All submissions should refer to File Number SR-Amex-2007-129. 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 (<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-2007-129 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,³⁴ that the proposed rule change (SR-Amex-2007-129), as amended by Amendment No. 1, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁵

Florence E. Harmon
Deputy Secretary

³⁴ 15 U.S.C. 78s(b)(2).

³⁵ 17 CFR 200.30-3(a)(12).