

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-58814; File No. SR-Amex-2008-53)

October 20, 2008

Self-Regulatory Organizations; American Stock Exchange LLC; Order Granting Approval of Proposed Rule Change Related to Amendments to Rule 925 (Confirmations) and Rule 921 (Opening of Accounts)

On June 26, 2008, the American Stock Exchange LLC (the “Amex” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Exchange Act”)¹ and Rule 19b-4 thereunder.² Notice of the proposal was published for comment in the Federal Register on September 12, 2008.³ The Commission received no comments on the proposed rule change. This order approves the proposed rule change.

I. Description of the Proposed Rule Change

The Exchange proposed to amend Amex Rule 925 to clarify that written confirmations relating to options transactions are not required to specify the options exchange or exchanges on which such options contracts were executed. The Exchange further proposed to amend Amex Rule 921 to permit a General Securities Sales Supervisor to approve the opening of an options account.

A. Options Confirmation Rule (Rule 925)

Amex Rule 925 requires that every member and member organization promptly furnish to each customer a written confirmation of each options transaction for such customer’s account. This confirmation is required to disclose the type of option, the underlying security, the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 58466 (Sept. 5, 2008) 73 FR 53057 (Sept. 12, 2008).

expiration month, the exercise price, the number of option contracts, the premium, commissions, the transaction and settlement dates, whether the transaction was a purchase or a sale (writing) transaction, whether the transaction was an opening or a closing transaction, and whether the transaction was effected on a principal or agency basis. In addition, Rule 925 requires that each confirmation, by appropriate symbols, must distinguish between Exchange option transactions and other transactions in option contracts and between such transactions and transactions in other options. Rule 925 has been interpreted over the years by market participants to require that written confirmations relating to options transactions specify the options exchange or exchanges on which such options contracts were executed. This proposal seeks to clarify that Rule 925 does not require the name of the options exchange or exchanges on which an options contract is executed.

Prior to August 1999, an options class was typically listed on only one options exchange. In August 1999, the options exchanges began to multiply-list options classes that were previously listed on only one exchange. In October 1999, the Commission stated that it believed a linkage among options markets would benefit investors by increasing competition among markets (and market participants) to provide the best execution of customer orders.⁴ Subsequently, the Commission directed the options exchanges to act jointly in discussing, developing, and submitting for Commission approval an intermarket linkage plan for multiply-traded options. On July 28, 2000, the Commission approved the Plan for the Purpose of Creating and Operating an Intermarket Options Market Linkage (the “Options Linkage Plan” or “Linkage Plan”) submitted by the Amex, the Chicago Board Options Exchange, Inc., and the International

⁴ See Exchange Act Release No. 42029 (Oct. 19, 1999), 64 FR 57674 (Oct. 26, 1999).

Securities Exchange, Inc.⁵ The Philadelphia Stock Exchange, Inc., and the Pacific Stock Exchange agreed to participate in the Options Linkage Plan in November 2000.⁶ As a result of the introduction of multiple trading of options and the implementation of the Linkage Plan, the contracts in a customer options order could be executed on more than one options exchange and the significance of the options exchange or exchanges that execute a particular options transaction has diminished significantly.⁷

Under the duty of best execution, Amex members are required to exercise diligence to obtain the best price when routing customer options trades for execution. The Exchange, as well as the other members of the Options Self Regulatory Council (the “OSRC”),⁸ believes that in light of the existing best execution and disclosure requirements, the usefulness of including on an options confirmation the name of the options exchange or exchanges on which an options transaction was effected does not outweigh the operational difficulties of capturing the information given the multiple trading of options and the application of the Options Linkage Plan industry-wide. Consequently, the proposal would amend Amex Rule 925 to make clear that written confirmations relating to options transactions are not required to specify the options exchange or exchanges on which such options contracts were executed.

⁵ See Exchange Act Release No. 43086 (Jul. 28, 2000), 65 FR 48023 (Aug. 4, 2000).

⁶ See Exchange Act Release Nos. 43573 (Nov. 16, 2000), 65 FR 70850 (Nov. 28, 2000) and 43574 (Nov. 16, 2000), 65 FR 70851 (Nov. 28, 2000) (approval order).

⁷ Modifications to this paragraph discussed in telephone conference between Jeffrey P. Burns, Vice-President & Associate General Counsel, American Stock Exchange LLC, and Max Welsh, Special Counsel, Division of Trading and Markets, Securities and Exchange Commission, on August 7, 2008.

⁸ The OSRC consists of the options exchanges and the Financial Industry Regulatory Authority, Inc. (“FINRA”).

B. Options Account Opening Rule (Rule 921)

Amex Rule 921 governs the opening of options accounts by members and member organizations. Specifically, Rule 921(c), relating to “Diligence in Opening Account,” provides that in approving a customer’s account for options transactions, a member or member organization shall exercise due diligence to learn the essential facts as to the customer and his investment objectives and financial situation, and shall make a record of such information (which shall be retained in accordance with Amex Rule 922). Based on such information, the branch manager or other registered options principal (“ROP”) is required to approve in writing the customer’s account for options transactions. If the branch manager is not a ROP, the branch manager’s approval of the account must be confirmed within a reasonable time by a ROP. The Exchange and the other members of the ORSC believe that an amendment to the current options account opening procedures is warranted so that a general securities sales supervisor, in addition to a ROP, is able to open an options account without the approval of a ROP. The other members of the ORSC are also expected to file similar amendments to their options account opening rules.

The Exchange believes that permitting a general securities sales supervisor to approve the opening of an options account would be appropriate and would properly reflect the maturity of the options market and the manner in which the uses of options are more integrated with other securities in the implementation of investment strategies.⁹ In particular, the Exchange believes that the proposed amendment to Rule 921 would further permit member firms to integrate their

⁹ The Commission recently approved the elimination of the Senior Registered Options Principal (“SROP”) and Compliance Registered Options Principal (“CROP”) supervisory categories, permitting member firms to supervise their options activities through their overall supervisory and compliance programs that monitor all other securities products. See Exchange Act Release No. 57738 (April 29, 2008), 73 FR 25805 (May 7, 2008) (approval order).

options activities into their overall supervisory and compliance structures that monitor all securities products.

II. Discussion and Findings

After careful review of the proposed rule change, the Commission finds that the proposed rule change is consistent with Section 6 of the Exchange Act,¹⁰ in general, and furthers the objectives of Section 6(b)(5),¹¹ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade and to foster cooperation and coordination with persons engaged in facilitating transactions in securities. The Commission also finds that the proposed rule change is designed to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest, by clarifying options confirmation and account opening procedure rules to better reflect the realities of the modern options market and the compliance and regulatory structures adopted by firms. The Commission believes that the proposal is consistent with Section 6(b)(5) Exchange Act because the proposed amendments to Amex Rules 925 and 921 better reflect the manner in which standardized options are listed and traded on the options exchanges and integrated into firms' general securities supervision and compliance programs.

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

¹¹ 15 U.S.C. 78f(b)(5).

III. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹² that the proposed rule change (SR-Amex-2008-53) be, and hereby is, approved.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.¹³

Florence E. Harmon
Acting Secretary

¹² 15 U.S.C. 78s(b)(2).

¹³ 17 CFR 200.30-3(a)(12).