

Fund); (ii) BankAmerica Group; (iii) an officer or director of BankAmerica Group; or (iv) an entity (other than a Third Party Fund) in which the General Partner acts as a general partner or has a similar capacity to control the sale or other disposition of the entity's securities. The restrictions contained in this condition, however, will not be deemed to limit or prevent the disposition of an investment by a Co-Investor: (i) to its direct or indirect wholly-owned subsidiary, to any company (a "Parent") of which the Co-Investor is a direct or indirect wholly-owned subsidiary, or to a direct or indirect wholly-owned subsidiary of its Parent; (ii) to immediate family members of the Co-Investor or a trust or other investment vehicle established for any immediate family member; (iii) when the investment is comprised of securities that are listed on any exchange registered as a national securities exchange under section 6 of the Exchange Act; (iv) when the investment is comprised of securities that are national market system securities pursuant to section 11A(a)(2) of the Exchange Act and rule 11Aa2-1 under the Exchange Act; or (v) when the investment is comprised of securities that are listed on or traded on any foreign securities exchange or board of trade that satisfies regulatory requirements under the law of the jurisdiction in which the foreign securities exchange or board of trade is organized similar to those that apply to a national securities exchange or a national market system for securities.

4. Each Partnership and the General Partner will maintain and preserve, for the life of the Partnership and at least two years thereafter, the accounts, books, and other documents that constitute the record forming the basis for the audited financial statements that are to be provided to the Participants in the Partnership, and each annual report of the Partnership required to be sent to Participants, and agree that these records will be subject to examination by the SEC and its staff.<sup>4</sup>

5. The General Partner of each Partnership will send to each Participant in the Partnership who had an interest in any capital account of the Partnership, at any time during the fiscal year then ended, Partnership financial statements audited by the Partnership's independent accountants. At the end of each fiscal year, the General Partner will make a valuation or

have a valuation made of all of the assets of the Partnership as of the fiscal year end in a manner consistent with customary practice with respect to the valuation of assets of the kind held by the Partnership. In addition, within 120 days after the end of each fiscal year of each Partnership or as soon as practicable thereafter, the General Partner of the Partnership will send a report to each person who was a Participant in the Partnership at any time during the fiscal year then ended, setting forth the tax information necessary for the preparation by the Participant of federal and state income tax returns.

6. If purchases or sales are made by a Partnership from or to an entity affiliated with the Partnership by reason of a 5% or more investment in the entity by a BankAmerica director, officer, or employee, the individual will not participate in the Partnership's determination of whether or not to effect the purchase or sale.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40985; File No. SR-AMEX-98-45]

### Self-Regulatory Organizations; American Stock Exchange LLC; Order Granting Approval to Proposed Rule Change Relating to Margin Treatment of Grand Exchange-Traded Fund Share Options Contracts

January 27, 1999.

#### I. Introduction

On November 25, 1998, 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")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to permit each "Grand" Exchange-Traded Fund Share (Fund Share)<sup>3</sup> option

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> The term Exchange-Traded Fund Share includes securities representing interests in unit investment trusts or open-end management investment companies that hold securities based on an index or portfolio of securities. Currently, the Exchange trades unit investment trust securities known as Portfolio Depositary Receipts<sup>SM</sup> ("PDRs") based on

contract to be recognized to the same extent that 10 ordinary Fund Share option contracts would be recognized under Amex Rule 462—Minimum Margins.

The proposed rule change was published for comment in the **Federal Register** on December 24, 1998.<sup>4</sup> No comments were received on the proposal. This order approves the proposal.

#### II. Description of the Proposal

The rule proposal clarifies that the margin requirements set forth in Amex Rule 462—Minimum Margins<sup>5</sup> apply to an option contract overlying 1000 Exchange-Traded Fund Shares (the "Grand option contract").<sup>6</sup> The Amex represents that the Grand option contract is the economic equivalent of holding 10 ordinary Fund Share option contracts, each of which overlies 100 shares of an underlying Fund Share. The Exchange notes that, specifically, the provisions of Amex Rule 462(d)(2)(D)(ii) have applicability to an

the Standard & Poor's 500® Composite Stock Price Index, the Standard & Poor's MidCap 400 Index, and the Dow Jones Industrial Average. In addition, the Exchange trades Fund Shares which are issued by an open-end management investment company consisting of seventeen separate series known as World Equity Benchmark Shares<sup>SM</sup> (WEBS) based on seventeen foreign equity market indexes. The Exchange also trades nine Fund Shares known as Select Sector SPDRs<sup>SM</sup>, each of which is offered by the Select Sector SPDR<sup>SM</sup> Trust, an open-end management investment company. PDRs and WEBS are listed on the Amex pursuant to Rule 1000, *et seq.* and Rule 1000A *et seq.*, respectively, and trade like shares of common stock.

<sup>4</sup> Securities Exchange Act Release No. 40803 (December 17, 1998), 63 FR 71310 (File No. SR-AMEX-98-45).

<sup>5</sup> Amex Rule 462 states: "In the case of a put or call dealt in on a registered national securities exchange or a registered securities association and issued by The Options Clearing Corporation, and representing options on equity securities, 100% of the option premium plus 20% of the market value of the equivalent number of shares of the underlying security, reduced by any excess of the exercise price over the current market price of the underlying security in the case of a call, or any excess of the current market price of the underlying security over the exercise price in the case of a put, (except that in the case of such options on Exchange-Traded Fund Shares or other securities that represent an interest in a registered investment company that satisfies the criteria set forth in Rule 915; Commentary .06, margin must equal at least 100% of the current market value of the contract plus (1) 15% of the market value of equivalent units of the underlying security value if the Exchange-Traded Fund Share holds securities based upon a broad-based index or portfolio; or (2) 20% of the market value of equivalent units of the underlying security value if the Exchange-Traded Fund Share holds securities based upon a narrow-based index or portfolio)." Amex Rule 462(d)(2)(D)(ii); Securities Exchange Act Release No. 40157 (July 1, 1998), 63 FR 37426 (July 10, 1998) ("July 1998 Release").

<sup>6</sup> On July 1, 1998, the Exchange received approval to trade both options overlying Exchange-Traded Fund Share and Grand option contract. See July 1998 Release, *supra* note 5.

<sup>4</sup> Each Partnership will preserve the accounts, books and other documents required to be maintained in an easily accessible place for the first two years.

account holding a "straddle" or a "spread" position, as discussed below.

Amex Rules 462(d)(2)(F) and (G) recognize the reduced risk associated with an account holding a "straddle" or a "spread" position by providing for margin requirements specific to the particular strategy (straddle or spread). For example, in the case of a spread strategy (*i.e.*, where an account holding a short call also holds a long call, or where an account holding a short put also holds a long put (provided the long positions expire on or after the expiration of the short positions)), Amex Rule 462(d)(2)(G) requires margin for a call spread equal to the lesser of (1) 100% of the option premium plus 15% of the market value of the equivalent number of shares of the underlying security value if the Exchange-Traded Fund Share holds securities based upon a broad-based index or portfolio; or 20% of the market value of the equivalent number of shares of the underlying security value if the Exchange-Traded Fund Share holds securities based upon a narrow-based index or portfolio, reduced by any excess of the exercise price over the current market price of the underlying security in the case of a call, or any excess of the current market price of the underlying security over the exercise price in the case of a put or (2) the amount, if any, by which the exercise price of the "long" call exceeds the exercise price of the "short" call. In the case of a put spread, Amex Rule 462(d)(2)(G) requires margin equal to the lesser of (1) 100% of the option premium plus 15% of the market value of the equivalent number of shares of the underlying security value if the Exchange-Traded Fund Share holds securities based upon a broad-based index or portfolio; or 20% of the market value of the equivalent number of shares of the underlying security value if the Exchange-Traded Fund Share holds securities based upon a narrow-based index or portfolio, reduced by any excess of the exercise price over the current market price of the underlying security in the case of a call, or any excess of the current market price of the underlying security over the exercise price in the case of a put or (2) the amount, if any, by which the exercise price of the "short" put exceeds the exercise price of the "long" put. In these contexts, the Exchange proposes that the required margin under Amex Rule 462(d)(2)(G) be applicable for each short Grand Fund Share call (put) option

contract offset by 10 long ordinary Fund Share call (put) option contracts.

In the case of a straddle (*i.e.*, where an account holding both a put and a call for the same number of shares of the same equity security), guaranteed or carried "short" for a customer, the amount of margin required under Amex Rule 462(d)(2)(F) is the margin on the put or the call whichever is greater (under Amex Rule 462(d)(2)(D)), plus 100% of the premium on the other option. In this context, the Exchange proposes that the reduced margin under Amex Rule 462(d)(2)(D) be applicable for each Grand Fund Share call (put) option contract offset by 10 ordinary Fund Share put (call) option contracts. The Exchange believes the proposed margin offsets are appropriate given that the Grand contract is the economic equivalent of 10 ordinary Fund Share option contracts. In addition, the Exchange believes that by providing the same margin treatment for Grand Fund Share option contracts and 10 ordinary Fund Share option contracts, any potential investor confusion concerning the margin treatment of Grand contracts will be eliminated.

### III. Discussion

After careful review, 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 and, in particular, with the Section 6(b)(5) <sup>7</sup> requirements that the rules of an exchange be 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.<sup>8</sup>

The Commission believes that it is reasonable and appropriate for the Exchange to apply the margin requirements of Amex Rule 462 to a Grand option contract.<sup>9</sup> Specifically, the

<sup>7</sup> 15 U.S.C. 78f(b)(5).

<sup>8</sup> In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>9</sup> The Commission notes that the Exchange currently applies the margin requirements of Amex Rule 462 to the economic equivalent of a Grand

Commission believes it is appropriate to require minimum margin of 100% of the current market value of the option plus 15% of the market value of the underlying security value ("broad-based margin") for Grand option contracts based on a broad-based index or portfolio. In this respect, the margin requirements for Grand option contracts are comparable to those that currently apply to broad-based index options.<sup>10</sup>

Further, the Commission believes that requiring minimum margin of 100% of the current market value of the option plus 20% of the market value of the underlying security value ("narrow-based margin") for Grand option contracts based on a narrow-based index or portfolio is also appropriate. In this respect, the margin requirements for Grand option contracts are comparable to those that currently apply to narrow-based index options. In addition, this requirement should help to ensure that purchasers of Grand option contracts based on a narrow-based index or portfolio post sufficient margin to address any concerns associated with the potentially increased volatility inherent in a narrow-based index product.

For the foregoing reasons, the Commission finds that the Exchange's proposal to apply Amex Rule 462 regarding margin treatment to Grand Fund Share option contracts is consistent with the requirements of the Act and the rules and regulations thereunder.

### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>11</sup> that the proposed rule change (SR-AMEX-98-45) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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option contract (*i.e.*, 10 ordinary Fund Share option contracts). See July 1998 release, *supra* note 5.

<sup>10</sup> The Commission notes that the portfolios or indexes comprising WEBS have not been designated as broad-based by the Commission. In this order, the Commission is only determining that board-based margin treatment for these WEBS is appropriate, without addressing the issue of whether such WEBS are based. See July 1998 Release, *supra* note 5.

<sup>11</sup> 15 U.S.C. 78s(b)(2).

<sup>12</sup> 17 CFR 200.30-3(a)(2).