

subsequently filed Amendment No. 1 to the proposal.⁴

Notice of the proposed rule change and Amendment No. 1 were published for comment and appeared in the Federal Register on October 20, 1995.⁵ No comments were received on the proposal. This order grants partial approval of the portion of the proposal amending Amex Rules 904 and 905.⁶

Currently, Amex Rule 904 prohibits Amex members from effecting, for any account in which the member has an interest or for any customer account, transactions in option contracts dealt in on the Exchange that would exceed the Amex's established position limits. Similarly, Amex Rule 905 prohibits members from exercising, for any account in which the member has an interest or for any customer account, a long position in option contracts dealt in on the Exchange that would exceed the Amex's established exercise limits. As presently written, Amex Rules 904 and 905 apply only to option classes traded on the Amex and not to opening transactions or exercises in option classes traded on another options exchange. Since each options exchange has jurisdiction only over its own members, a jurisdictional loophole exists where, for example, an Amex member exceeds position or exercise limits on another options exchange of which it is not a member in an option class not listed on the Amex. Under those circumstances, the Amex could not take disciplinary action against its member for violating the position and exercise limit rules in an option class traded on another options exchange. Similarly, the options exchange where the option class is traded could not bring an action since it does not have jurisdiction over a non-member.

acting in concert. Exercise limits prohibit an investor or group of investors acting in concert from exercising more than a specified number of puts or calls in a particular class within five consecutive business days.

⁴ In Amendment No. 1, the Amex indicated that it will apply the interpretations and policies of another exchange when applying that exchange's position and exercise limit rules to an Amex member's transactions on that exchange. In addition, the Amex stated that it will take disciplinary action pursuant to its own rules if the Amex finds that an Amex member has violated the position and exercise limit rules of another exchange. See Letter from Claire McGrath, Managing Director and Special Counsel, Derivative Securities, Amex, to Michael Walinskas, Branch Chief, Derivatives Regulation, Office of Self-Regulatory Oversight, Division of Market Regulation, Commission, dated September 19, 1995 ("Amendment No. 1").

⁵ Securities Exchange Act Release No. 36353 (October 10, 1995), 60 FR 54266.

⁶ In partially approving the Amex's proposal, the Commission is not approving, at this time, the portion of the proposal amending Amex Rule 900(a).

In order to close this jurisdictional loophole, the Amex proposes to extend its disciplinary jurisdiction to include members' violations of the position and exercise limits of other options exchanges. Specifically, the Amex proposes to amend Amex Rule 904 to prohibit Amex members who are not members of the exchange where the options transactions are effected from effecting, for any account in which the Amex member has an interest or for any customer account, transactions in option contracts that would exceed the position limits established by the exchange where the options are traded. Similarly, the Amex proposes to amend Exchange Rule 905 to prohibit Amex members who are not members of the exchange where the options transactions are effected from exercising, for any account in which the Amex member has an interest or for any customer account, a long position in option contracts that would exceed the exercise limits established by the exchange where the options are traded.

The Amex notes that the proposed extension of jurisdiction will apply only when the Amex member is not a member of the other options exchange. In addition, the Amex will apply the applicable position and exercise limit rules of the other exchange, as well as its interpretations and policies.⁷

The Amex believes that the proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Section 6(b)(5), in particular, in that it 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, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

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, the requirements of Section 6 (b) (5) ⁸ in that it is designed to prevent fraudulent and manipulative acts and practices and to protect investors and the public interest. Specifically, the Amex has noted that Exchange Rules 904 and 905 currently apply solely to option contracts dealt in on the Amex and do not prohibit Amex

members from exceeding the position and exercise limits set by another exchange for non-Amex listed option contracts. Thus, if an Amex member exceeds the position and exercise limits of another options exchange, and the Amex member is not a member of the exchange which lists the options, then neither the Amex or the exchange that lists the options is able to enforce its position and exercise limits against the Amex member. The proposal eliminates this loophole and strengthens the Exchange's rules by requiring an Amex member who trades non-Amex listed option contracts on another exchange, and who is not a member of that exchange, to comply with the option position and exercise limits set by the exchange where the transactions are effected.⁹

As the Commission has noted in the past,¹⁰ options position and exercise limits are intended to prevent the establishment of large 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-manipulations¹¹ and for corners or squeezes of the underlying market. The proposal extends the benefits of the position and exercise limit rules to include all exchange-traded options transactions entered into by Amex members by bringing an Amex member's customer transactions in non-Amex exchange listed options within the Amex's jurisdiction for position and exercise limit purposes.

Finally, the Commission notes that the Amex's proposal to amend Amex Rules 904 and 905 is identical to proposals recently approved by the Commission.¹²

⁹ Under the proposal, the Amex will also apply the interpretations and policies of the exchange where the options transactions are effected. The Amex will take disciplinary action pursuant to its own rules when it finds that an Amex member has violated the position and exercise limit rules of another exchange. See Amendment No. 1, *supra* note 4.

¹⁰ See, e.g., Securities Exchange Act Release No. 33283 (December 3, 1993), 58 FR 65204 (December 13, 1993) (order approving File No. SR-CBOE-93-43).

¹¹ Mini-manipulation is an attempt to influence, over a relatively small range, the price movement in a stock to benefit a previously established derivatives position.

¹² See Securities Exchange Act Release Nos. 36242 (September 18, 1995), 60 FR 49305 (September 22, 1995) (order approving File No. SR-CBOE-95-22); 36257 (September 20, 1995), 60 FR 50228 (September 28, 1995) (order approving File No. SR-PHLX-95-31); and 36350 (October 6, 1995), 60 FR 53654 (October 16, 1995) (order approving File No. SR-PSE-95-17).

⁷ See Amendment No. 1, *supra* note 4. The Commission notes that the position and exercise limits in equity options are uniform among all options markets.

⁸ 15 U.S.C. 78f(b)(5) (1988 & Supp. V 1993).