

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>16</sup>

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*Deputy Secretary.*

[FR Doc. 01-5540 Filed 3-6-01; 8:45 am]

BILLING CODE 8010-01-M

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44019; File No. SR-Amex-01-10]

### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change by the American Stock Exchange LLC to Extend for an Additional 90 Days Its Pilot Program Relating to Facilitation Cross Transactions

February 28, 2001.

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> notice is hereby given that on February 27, 2001, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to extend for an additional 90 days its pilot program relating to facilitation cross transactions, described in detail in Part II.A. below. The text of the proposed rule change is available at the Office of the Secretary, Amex, and at the Commission.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has

prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

#### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The Exchange proposes to extend for an additional 90 days its pilot program relating to member firm facilitation cross transactions approved by the Commission on June 2, 2000.<sup>3</sup> Revised Commentary .02(d) to Amex Rule 950(d) establishes a pilot program to allow facilitation cross transactions in equity options.<sup>4</sup> The pilot program entitles a floor broker, under certain conditions, to cross a specified percentage of a customer order with a member firm's proprietary account before market makers in the crowd can participate in the transaction. The provision generally applies to orders of 400 contracts or more. However, the Exchange is permitted to establish smaller eligible order sizes, on a class by class basis, provided that the eligible order size is not for fewer than 50 contracts.

Under the current program, when a trade takes place at the market provided by the crowd, all public customer orders on the specialist's book or represented in the trading crowd at the time the market was established must be satisfied first. Following satisfaction of any customer orders on the specialist's book, the floor broker is entitled to facilitate up to 20% of the contracts remaining in the customer order. When a floor broker proposes to execute a facilitation cross at a price between the best bid and offer provided by the crowd in response to his initial request for a market—and the crowd then wants to take part or all of the order at the improved price—the floor broker is entitled to priority over the crowd to facilitate up to 40% of the contracts. If the floor broker has proposed the cross at a price between the best bid and offer provided by the crowd in response to his initial request for a market, and the trading crowd subsequently improves the floor broker's price, and the facilitation cross is executed at that improved price, the

<sup>3</sup> See Securities Exchange Act Release No. 42894 (June 2, 2000), 65 FR 36850 (June 12, 2000). The pilot program has since been extended twice. See Securities Exchange Act Release Nos. 43229 (August 30, 2000), 65 FR 54572 (September 8, 2000); and 43643 (November 29, 2000), 65 FR 76686 (December 7, 2000).

<sup>4</sup> Facilitation cross transactions occur when a floor broker representing the order of a public customer of a member firm crosses that order with a contra side order from the firm's proprietary account.

floor broker would only be entitled to priority to facilitate up to 20% of the contracts.

The program also provides that if the facilitation transaction takes place at the specialist's quoted bid or offer, any participation allocated to the specialist pursuant to Amex trading floor practices would apply only to the number of contracts remaining after all public customer orders have been filled and the member firm's crossing rights have been exercised.<sup>5</sup> However, in no case could the total number of contracts guaranteed to the member firm and the specialist exceed 40% of the facilitation transaction.

In the almost nine months since the pilot program began, the Exchange has found it to be generally successful. The Exchange seeks to extend the pilot program for an additional 90 days, pending consideration of a related proposed rule change it has filed with Commission<sup>6</sup> concerning revisions to the program that the Amex believes will provide further incentive for price improvement by using different procedures to determine specialist and registered option trader participation. The related proposal would also make the program permanent.

Because the pilot program is due to expire on February 27, 2001, the Amex has requested that the Commission expedite review of, and grant accelerated approval to, the proposal to extend it, pursuant to section 19(b)(2) of the Act.<sup>7</sup>

##### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act<sup>8</sup> in general and furthers the objectives of section 6(b)(5) of the act<sup>9</sup> in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

<sup>5</sup> Amex trading practices provide specialists with a greater than equal participation in trades that take place at a price at which the specialist is on parity with registered options traders in the crowd. These practices are subject to a separate filing that seeks to codify specialist allocation practices. See Securities Exchange Act Release No. 42964 (June 20, 2000), 65 FR 39972 (June 28, 2000).

<sup>6</sup> See File No. SR-Amex-00-49, available for inspection at the Commission's Public Reference Room.

<sup>7</sup> 15 U.S.C. 78s(b)(2).

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>16</sup> 17 CFR 200.30-3(a)(12).

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

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

### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will impose no burden on competition.

### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

### III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change 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 in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal offices of the Exchange. All submissions should refer to File No. SR-Amex-01-10 and should be submitted by March 28, 2001.

### IV. Commission Findings and Order Granting Accelerated Approval of 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.<sup>10</sup> In its original approval of the pilot program,<sup>11</sup> the Commission detailed its reasons for finding its substantive features consistent with the Act, and, in particular, the requirements of sections 6(b)(5) and 6(b)(8) of the Act.<sup>12</sup> The Commission has previously approved rules on other exchanges that establish substantially similar programs

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

<sup>11</sup> See *supra*, note 3.

<sup>12</sup> 15 U.S.C. 78f(b)(5) and (b)(8).

on a permanent basis,<sup>13</sup> and the extension of the pilot program on the Amex—pending review of its related proposal to revise the program and make it permanent—raises no new regulatory issues for consideration by the Commission.

The Commission finds good cause, consistent with sections 6(b) and 19(b)(2) of the Act, for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of filing thereof in the **Federal Register**. The proposal will allow the pilot program, otherwise due to expire on February 27, 2001, to remain effective and in place uninterrupted while revisions are being considered, and does not raise any new regulatory issues.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved on an accelerated basis as a pilot program through May 28, 2001. For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01-5543 Filed 3-6-01; 8:45 am]

**BILLING CODE 8010-01-M**

### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44017; File No. SR-ISE-00-20]

#### Self Regulatory Organizations; Order Approving Proposed Rule Change by the International Securities Exchange LLC Relating to Limitations on Orders

February 28, 2001.

#### I. Introduction

On November 20, 2000, the International Securities Exchange LLC ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("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 amend ISE Rule 717 relating to limitations on orders.<sup>3</sup> The proposed rule change was published for comment

<sup>13</sup> See, e.g., Securities Exchange Act Release Nos. 42835 (May 26, 2000), 65 FR 35683 (June 5, 2000), and 42848 (May 26, 2000), 65 FR 36206 (June 7, 2000).

<sup>14</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> The ISE filed its proposed rule change on November 20, 2000. On December 18, 2000, the ISE filed Amendment No. 1 that entirely replaced the original rule filing.

in the **Federal Register** on January 16, 2001.<sup>4</sup> The Commission received no comments on the proposed rule change. This order approves the proposal.

#### II. Description of the Proposal

Exchange market makers must be firm at their quotations for all orders, although they can set different sizes for customer and broker-dealer orders. When the size of a particular quote is exhausted, the Exchange's trading system automatically moves the quote to an inferior price according to parameters preset by the market maker. However, the system moves only the quotation in the options series in which there was a trade, leaving the market maker exposed to the risk that multiple orders may be executed nearly simultaneously in many series of the same option. This situation increases an ISE market maker's "delta risk" (the amount of underlying stock that would be necessary to hedge the options position), due to exposure across multiple series. This could result in ISE market makers providing more liquidity than may be available in the underlying stock. Under the ISE's proposed new paragraph (h), members shall not cause the entry of more than one order every fifteen seconds for the account of the same beneficial owner in options on the same underlying security.

The Exchange also proposes to amend paragraph (g) of ISE Rule 717, which currently prohibits an Electronic Access Member ("EAM") from entering an order for any other member of the Exchange. The amendment will limit the scope of ISE Rule 717(g) to only prohibit EAMs from entering orders for ISE market maker accounts.

#### III. Discussion

The Commission has reviewed the ISE's proposed rule change and finds, for the reasons set forth below, that the proposal is consistent with the requirements of section 6 of the Act<sup>5</sup> and the rules and regulations thereunder applicable to a national securities exchange.

The Commission notes that amending ISE Rule 717 to prohibit members from causing the entry of more than one order for the same beneficial account within a fifteen second period should help reduce ISE market maker risk exposure. The Commission believes that fifteen seconds is a sufficient time period to allow market makers to change their quotations following an execution, while at the same time not unduly long

<sup>4</sup> See Securities Exchange Act Release No. 43803 (January 4, 2001), 66 FR 3624 (January 16, 2001).

<sup>5</sup> 15 U.S.C. 78f.