

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-49797; File No. SR-Amex-2004-41)

June 3, 2004

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC to Implement a Quote Assist Feature in Options on a Pilot Program Basis

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 May 28, 2004, 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.

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

The Exchange proposes to amend Amex Rule 950(g) to implement a quote-assist feature on a pilot program basis until April 30, 2005. The text of the proposed rule change appears below. New text is in italics.

**Rule 950**

(a) through (f) No change.

(g) The provisions of Rule 156, together with the following additional provision, shall apply to Exchange option transactions:

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

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

A broker who has been given a spread order, or a straddle order or a combination order shall not be held responsible for an execution based upon transaction prices that are established at the opening or close of trading.

**• • • Commentary**

.01 The specialist shall maintain and keep active the limit order quote assist feature. The Exchange will establish the time frame within which the quote assist feature will display eligible customer limit orders, which in no event will be longer than 30 seconds. Use of the quote assist feature will be on a pilot program basis until April 30, 2005, or until all option classes have begun trading on the Exchange's new trading system known as ANTE, whichever occurs first.

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 Exchange 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 IV 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 currently requires all option specialists to execute or display customer limit orders that improve the bid or offer by price or size immediately upon receipt, unless an exception to the requirement applies. The Exchange currently looks to Amex Rule 156

regarding the representation of orders and Article V, Section 4(h) of the Amex Constitution regarding conduct inconsistent with just and equitable principles of trade for its authority to enforce this requirement and will continue to do so until its proposal pending with the Commission to adopt a specific limit order display rule is approved.<sup>3</sup> That pending proposed rule change amends Amex Rule 958A by adding a new paragraph (e), which would require specialists to either execute or display customer limit orders immediately upon receipt, unless one of the exceptions set forth in the proposed rule applies.<sup>4</sup> The pending proposed rule change defines “immediately upon receipt” to mean “as soon as practicable which shall mean, under normal market conditions, no later than 30 seconds after receipt.”<sup>5</sup>

To assist specialists in complying with their current and future regulatory obligations as described above, the Exchange proposes to provide specialists with an automated quote assist feature as part of the Amex Options Display Book (also referred to as “AODB”) on a pilot program basis until April 30, 2005. The quote assist feature would automatically display eligible limit orders within a configurable time that can be set only on a floor-wide basis by the Exchange. While all customer limit orders are expected to be displayed immediately, the quote assist feature can be set to automatically display limit orders at or close to the end of the 30-second time frame or within any other shorter time frame established by the Exchange. In the event there are instances where the specialist has not yet addressed the order within the applicable 30-second period, the quote assist feature would automatically display the eligible customer limit order in the limit order book at or close to the end of that period. The quote assist

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<sup>3</sup> See File No. SR-Amex-00-27.

<sup>4</sup> Id.

feature would help to ensure that eligible customer limit orders are displayed within the required time period then in effect. Proposed commentary to Amex Rule 950(g) would require specialists to maintain and keep active the limit order quote assist feature. The Exchange will establish the time frame within which the quote assist feature will display eligible customer limit orders, which time frame will not exceed the customer limit order display requirement then in effect.

The quote assist feature is proposed to be used on a pilot program basis until April 30, 2005. Thus, use of the quote assist feature will expire either (i) on April 30, 2005 or (ii) when all option classes have begun trading on the Exchange's new trading system known as the ANTE System,<sup>6</sup> whichever occurs first.

Unlike the quote assist feature proposed for the ANTE System, the specialist would not have the ability to deactivate the quote assist feature under the instant proposal. The Exchange would have the ability to deactivate the quote assist feature in AODB only on a floor-wide basis. Should the Exchange wish to deactivate the quote assist feature for a particular trading day, it would be required to do so after the close of trading on the previous trading day.<sup>7</sup>

The Exchange notes that the proposed quote assist feature would not relieve the specialists of their obligation to display customer limit orders immediately. To the extent that a specialist excessively relies on the quote assist feature to display eligible limit orders without attempting to address the orders immediately, the specialist could be violating his due diligence

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<sup>5</sup> See id.

<sup>6</sup> See Securities Exchange Act Release No. 49747 (May 20, 2004) 69 FR 30344 (May 27, 2004) (Order Approving File No. SR-Amex-2003-89).

<sup>7</sup> The quote assist feature cannot be activated or deactivated while trading is in session. Telephone conversation between Claire McGrath, Senior Vice President and Deputy

obligation. However, brief or intermittent reliance on the quote assist feature by a specialist during an unexpected surge in trading activity in an option class would not violate the specialist's obligation if used when the specialist is not physically able to address all the eligible limit orders within 30 seconds. Upon effectiveness of this rule filing, the Exchange will issue a regulatory notice discussing the issue of excessive reliance on the quote assist feature.

The Exchange would continue to conduct surveillance to ensure that specialists comply with their obligation to execute or book all eligible limit orders within the time period prescribed by Exchange rules or policy. The Exchange commits to conduct surveillance designed to detect whether specialists as a matter of course rely on the quote-assist feature to display all eligible limit orders. A practice of excessive reliance upon the quote assist feature would be reviewed by Member Firm Regulation as a possible due diligence violation. The Exchange commits to run its limit order display exception report at various display intervals in an attempt to detect a pattern suggestive of undue reliance on the quote assist feature. The Exchange commits to report to the Commission every three months the statistical data it uses to determine whether there has been impermissible reliance on the quote assist feature by specialists.

## 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 and to promote just and

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General Counsel, Amex, and Nathan Saunders, Attorney, Division of Market Regulation, Commission (May 19, 2004).

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

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

equitable principles of trade.

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

The Exchange does not believe that the proposed rule change will impose any 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. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>10</sup> and subparagraph (f)(6) of Rule 19b-4<sup>11</sup> thereunder because it does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate; and the Exchange has given the Commission written notice of its intention to file the proposed rule change at least five business days prior to filing. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Under Rule 19b-4(f)(6)(iii) of the Act,<sup>12</sup> the proposal does not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if

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<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

<sup>12</sup> 17 CFR 240.19b-4(f)(6)(iii).

consistent with the protection of investors and the public interest, and the Exchange is required to give the Commission written notice of its intention to file the proposed rule change at least five business days prior to filing. The Exchange requested that the Commission accelerate the 30-day operative date to May 31, 2004, so that it might implement the proposed rule change on that date to assist and facilitate specialists' compliance with their regulatory obligation and ensure that eligible customer limit orders are displayed in the disseminated quotations immediately. The Exchange states that the implementation of the proposed quote-assist feature in the AODB will be completed on or about May 31, 2004. The Exchange contends that this proposed rule is substantially similar to comparable rules the Commission approved for the Chicago Board Options Exchange, Inc. ("CBOE"), and the New York Stock Exchange, Inc., ("NYSE"), which were published for public notice and comment.<sup>13</sup> As a result, the Exchange believes that the proposed rule change does not raise any new regulatory issues. The Commission, consistent with the protection of investors and the public interest, has determined to accelerate the 30-day operative date to June 3, 2004,<sup>14</sup> and, therefore, the proposal is effective and operative on that date.

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<sup>13</sup> See Securities Exchange Act Release Nos. 42952 (June 16, 2000), 65 FR 39210 (June 23, 2000) (Commentary .10 to Amex Rule 170); 41386 (May 10, 1999), 64 FR 26809 (May 17, 1999) (Supplementary Material .15 to NYSE Rule 79A); and 47701 (April 18, 2004), 69 FR 22426 (April 28, 2004) (CBOE Rule 8.85(b)(vii)).

<sup>14</sup> For purposes only of accelerating the 30-day operative period for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

#### IV. 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. 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](mailto:rule-comments@sec.gov). Please include File Number SR-Amex-2004-41 on the subject line.

##### Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609.

All submissions should refer to File Number SR-Amex-2004-41. 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. 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-2004-41 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>15</sup>

Margaret H. McFarland  
Deputy Secretary

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<sup>15</sup> 17 CFR 200.30-3(a)(12).