

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-50188; File No. SR-Amex-00-27)

August 12, 2004

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of Proposed Rule Change and Amendments No. 1, 2, 3, 4, 5, and 6 Thereto to Require the Immediate Display of Customer Option Limit Orders

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act” or “Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 10, 2000, 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, II and III below, which Items have been prepared by the Exchange. The Exchange filed amendments to the proposed rule change on March 13, 2002,³ April 3, 2003,⁴ July 15, 2003,⁵ August 19, 2003,⁶

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ On March 13, 2002, the Exchange filed a Form 19b-4, which replaced the original filing in its entirety (“Amendment No. 1”).

⁴ On April 3, 2003, the Exchange filed a Form 19b-4, which replaced the original filing in and Amendment No. 1 in their entirety (“Amendment No. 2”).

⁵ On July 15, 2003, the Exchange filed a Form 19b-4, which replaced the original filing in and all previous amendments in their entirety (“Amendment No. 3”).

⁶ On August 19, 2004, the Exchange filed a Form 19b-4, which replaced the original filing and all previous amendments in their entirety (“Amendment No. 4”).

October 22, 2003,⁷ and August 12, 2004,⁸ respectively. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, 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 Rules 958A and 958A—ANTE to require the immediate display of customer options limit orders that better the current market quotation. In addition, the Exchange proposes to amend Amex Rule 590 to include violations of the options limit order display rules in the Minor Rule Violation Fine System. The text of the proposed rule change follows. Proposed new text is in italics.

Rule 590 General Rule Violations

(a) through (f) No changes.

(g) The Enforcement Department may impose fines according to the following schedule for the rule violations listed below:

* * * * *

- Violation of the Limit Order Display Rule. (SEC Rule 11Ac1-4 and Amex Rule 958A(e))

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⁷ See letter from Claire P. McGrath, Senior Vice President and Deputy General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated October 21, 2003 (“Amendment No. 5”). In Amendment No. 5, the Exchange amended the proposed text of Amex Rule 958(A)(e) to require that specialists publish immediately upon receipt, both the price and size of each customer options limit order that improves the displayed bid or offer.

⁸ On August 12, 2004, the Exchange filed a Form 19b-4, which replaced the original filing and all previous amendments in their entirety (“Amendment No. 6”).

Rule 958A Application of the Firm Quote Rule and the Limit Order Display Rule

(a) through (d) No change.

(e) Customer Limit Orders: (1) Specialists shall publish immediately upon receipt the price and size of each customer options limit order held by the specialist that is at a price or size that would improve the displayed bid or offer in the option that is the subject of the limit order. “Immediately upon receipt” shall mean, under normal market conditions, as soon as practicable but no later than 30 seconds after receipt.

(2) The requirement in subparagraph (1) shall not apply to any customer options limit order that: (i) is executed upon receipt of the order; (ii) is placed by a customer that expressly requests, either at the time that the order is placed or prior thereto pursuant to an individually negotiated agreement with respect to each customer’s order, that the order not be displayed and upon receipt of the order, the specialist announces to the trading crowd the information concerning the order that would be displayed absent the customer’s request; (iii) is in excess of 100 contracts, unless the customer placing the order requests the order be displayed; (iv) is received prior to or during the opening trading rotation whether at the beginning of the trading day or after a trading halt, provided the order is displayed immediately upon the conclusion of the trading rotation; (v) is an order type set forth in Rules 131 (c), (e), (i), (k), (l), (q), (r) and (s), 950(e) and 950—ANTE (e); or (vi) the terms of which are delivered by the specialist to another exchange for an execution.

(3) For purposes of this rule, the term “customer options limit order” shall mean an order to buy or sell an option at a specified price and size that is for the account of a customer

as defined in paragraph (a)(26) of Rule 11Ac1-1 under the Securities Exchange Act of 1934.

● ● ● Commentary

.01 through .02 No change.

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Rule 958A—ANTE Application of the Firm Quote Rule and the Limit Order Display Rule

(a) through (d) No change.

- (e) Customer Limit Orders: (1) Specialists shall publish immediately upon receipt the price and size of each customer options limit order held by the specialist that is at a price or size that would improve the displayed bid or offer in the option that is the subject of the limit order. “Immediately upon receipt” shall mean, under normal market conditions, as soon as practicable but no later than 30 seconds after receipt.
- (2) The requirement in subparagraph (1) shall not apply to any customer options limit order that: (i) is executed upon receipt of the order; (ii) is placed by a customer that expressly requests, either at the time that the order is placed or prior thereto pursuant to an individually negotiated agreement with respect to each customer’s order, that the order not be displayed and upon receipt of the order, the specialist announces to the trading crowd the information concerning the order that would be displayed absent the customer’s request; (iii) is in excess of 100 contracts, unless the customer placing the order requests the order be displayed; (iv) is received prior to or during the opening trading rotation whether at the beginning of the trading day or after a trading halt provided the order is displayed immediately upon the conclusion of the trading rotation; (v) is an order type set forth in Rules 131 (c), (e), (i), (k), (l), (q), (r) and (s), 950(e) and 950—ANTE (e); or (vi)

the terms of which are delivered by the specialist to another exchange for an execution.

(3) For purposes of this rule, the term “customer options limit order” shall mean an order to buy or sell an option at a specified price and size that is for the account of a customer as defined in paragraph (a)(26) of Rule 11Ac1-1 under the Securities Exchange Act of 1934.

● ● ● **Commentary**

.01 through .02 No change.

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 proposes to amend Amex Rules 958A and 958A—ANTE to require the immediate display of customer options limit orders. Customer limit orders in options are entered into the specialist’s limit order book (the “Amex Options Display Book” or “AODB” or the “Central Book” for orders in options trading on the ANTE System⁹) either through the

9 ANTE is an integrated, scalable, easily configurable system developed to meet the Exchange’s current and future competitive and economic challenges. ANTE has been designed to replicate and improve upon many of the processes and procedures in place on the trading floor. The ANTE System has replaced many of the Exchange’s systems,

Exchange's electronic routing system or manually by the specialist after the order has been handed to him by a floor broker. Currently, customer options limit orders of up to 30,000 contracts can be electronically sent to the Exchange by the member firms through the Amex Order File system ("AOF"). If the limit order is executable (i.e., the customer limit is at the displayed market) and is within certain order size parameters,¹⁰ it will be automatically executed by the Exchange's Auto-Ex system or within the ANTE System. If the limit order is for greater than the established size parameter or is not executable (i.e., the customer limit is away from—either better or worse than—the displayed market), it will be sent directly to the AODB. If the limit order is better than the current market, the specialist can either execute the order or display it.

including the automated quotation calculation system and specialist "book" functions such as limit order display, automatic order execution and allocation of trades. The functions available in the AODB are split between the ANTE Central Book and the ANTE Display Book. The Central Book contains what was formerly known as the "specialist's limit order book" and provides for the matching and execution of eligible orders similar to the Auto Match and Auto-Ex Systems. The ANTE Display Book is similar to the "Acknowledgement Box" currently found in the AODB and contains orders awaiting manual handling. Use of the ANTE System was approved by the Commission on May 20, 2004 and is currently being rolled-out across the Amex trading floor. It is expected that all equity and index option classes will be trading on the ANTE System by the end of the third quarter of 2005. See Securities Exchange Act Release No. 49747 (May 20, 2004), 69 FR 30344 (May 27, 2004)(Order Approving File No. SR-Amex-2003-89).

¹⁰ The Exchange's Auto-Ex feature was initially approved in 1985 to allow orders of up to 10 contracts to be automatically executed. Over the years, the Exchange states that it has recognized that the order size for some option classes should be larger. The Exchange has obtained Commission approval to increase the order size for select option classes up to 500 contracts. See Securities Exchange Act Release No. 47673 (April 14, 2003), 68 FR 19242 (April 18, 2003)(Order Approving File No. SR-Amex-2003-08). In the ANTE System, the automatic matching and execution of the executable customer limit orders can occur up to the disseminated size of the displayed quote.

To improve on the timeliness of displaying customer limit orders, the Exchange proposes to require the immediate display of customer options limit orders, which, under normal market conditions, would mean as soon as practicable but no later than 30 seconds after receipt,¹¹ unless a specific exception applies. The proposed limit order display rule would not apply to any customer limit order that: (i) is executed upon receipt of the order; (ii) a customer expressly requests not be displayed and upon receipt of the order, the specialist announces to the trading crowd the information concerning the order that would be displayed absent the customer's request; (iii) is in excess of 100 contracts, unless the customer placing such order requests that the order be displayed; (iv) is received prior to or during the opening trading rotation whether at the beginning of the trading day or after a trading halt, provided the order is displayed immediately upon the conclusion of the trading rotation; (v) is an order type set forth in Amex Rule 131 and made applicable to options trading pursuant to Amex Rules 950(e) and 950—ANTE (e); and (vi) the terms of which are delivered by the specialist to another exchange for an execution.

The Exchange proposes to exempt the following order types set forth under Amex Rule 131 and discussed in item (v) above from display: (1) All or None Orders — a market or limited price order which is to be executed in its entirety or not at all (Amex Rule 131 (c));¹² (2) At the Close Orders — market on close (“MOC”) and limit on close (“LOC”) orders are orders to buy or sell a

¹¹ “Receipt” for all option surveillance reports is the time the order enters the Amex Order File (“AOF”). Amex systems do not capture for use in the surveillance reports the time an order is displayed on the AODB or on the Central Book, which may be a few seconds after the order entered AOF. Thus, surveillance for the proposed limit order display rule is similar to other rules, such as the firm quote rule, wherein the Exchange measures compliance with the rule using the time the order enters AOF.

¹² The Commission's Limit Order Display Rule for equities provides an exception for “all or none” orders. See Exchange Act Rule 11Ac1-4(c)(7), 17 CFR 240.11Ac1-4(c)(7).

stated amount of a security at the Exchange's closing price. Regardless of the time at which an MOC or an LOC order is entered, the specialist is required to hold such order, and is precluded from representing, displaying or booking it until as near as possible to the close of trading. As a result it would be impossible to determine whether the specialist met the limit order display standard for those orders (Amex Rule 131(e)); (3) Fill or Kill Orders — market or limited price orders which are to be executed in their entirety as soon as they are represented in the trading crowd or on the ANTE System, and such orders, if not so executed, are to be treated as cancelled (Amex Rules 131(i) and 950—ANTE (e)(vi)); (4) Immediate or Cancel Orders — market or limited price orders which are to be executed in whole or in part as soon as such orders are represented in the trading crowd or on the ANTE System, and the portions not so executed are to be treated as cancelled (Amex Rules 131(k) and 950—ANTE (e)(v)); (5) Not Held Order — a discretionary order with instructions granting the agent discretion as to the price and/or the time of execution. Specialists are prohibited by Amex Rule 154, Commentary .03 from accepting Not Held Orders (Amex Rule 131(l)); (6) Stop Orders — a stop order to buy becomes a market order when a transaction in the option occurs at or above the stop price or the bid price is at or above the stop price after the order is represented in the trading crowd and a stop order to sell becomes a market order when transaction in the option occurs at or below the stop price or the offer price is at or below the stop price after the order is represented in the trading crowd (Amex Rule 131(q)); (7) Stop Limit Orders — a stop limit order to buy becomes a limit order executable at the limit price or at a better price, if obtainable, when a transaction in the option occurs at or above the stop price or when the bid price in such option is at or above the stop price and a stop limit order to sell becomes a limit order executable at the limit price or at a better price, if obtainable, when a transaction in the option occurs at or below the stop price or when the offer price in such option is at or below the

stop price (Amex Rule 131 (r)); and (8) Complex Orders: Spread, Straddle, Switch and Combination — These orders involve the trading of more than one option series as a package, typically at a net debit or credit, as opposed to a specific limit price for each series involved. Therefore, there is no specified limit price for each series involved to display. Moreover, the Options Price Reporting Authority (“OPRA”) does not accept for dissemination complex order quotes at net prices. Each component series of these complex orders is contingent upon the ability to execute the other component series in the order (Amex Rules 131(s), 950(e) and 950—ANTE (e)).

The Exchange staff will conduct periodic reviews to ensure that specialists are displaying limit orders in a timely manner in compliance with the display requirement. In determining compliance with the Rule, the Exchange will take into consideration factors such as market conditions and trading activity in the option and underlying security.¹³ Currently, violations of the limit order display rule for equities¹⁴ are handled by the Exchange’s Enforcement Department as part of the Minor Rule Violation Fine System set forth in Rule 590. The

¹³ See also Exchange Act Rule 11Ac1-4, 17 CFR 240.11Ac1-4, and NASD Notice to Members 99-99, which discusses member obligations to display customer limit orders. Exchange Act Rule 11Ac1-4 requires the immediate display of customer limit orders. In adopting Exchange Act Rule 11Ac1-4, the Commission clarified that the “immediate” display requirement meant that the orders must be displayed “as soon as is practicable after receipt which, under normal market conditions, would require display no later than 30 seconds after receipt.” See Securities Exchange Act Release No. 37619A, 61 FR 48290, at 48304 (September 12, 1996). Interpretations, such as NASD Notice to Members 99-99, further state that the 30-second requirement to display limit orders does not operate as a safe harbor, that various factors should be taken into consideration when evaluating the immediacy with which a customer limit order is displayed, and that any systematic delay in the handling of orders, regardless of how long, would constitute a violation of the Exchange Act Rule 11Ac1-4.

¹⁴ See Exchange Act Rule 11Ac1-4, 17 CFR 240.11Ac1-4.

Exchange also proposes to expand Amex Rule 590 to include violations of the options limit order display rule set forth in Amex Rules 958A(e) and 948A—ANTE (e).

In addition, the Exchange has recently implemented a quote assist feature on a one-year pilot program basis for both the AODB and the ANTE System, which automatically displays eligible limit orders within a configurable time period.¹⁵ While all customer limit orders are expected to be displayed immediately, the quote assist features 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 will automatically display the eligible customer limit order at or close to the end of that period. The quote assist features help to ensure that eligible customer limit orders are displayed within the required time period then in effect. The Exchange notes that the quote assist feature will 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 obligation. A practice of excessive reliance upon the quote assist feature is reviewed by the Exchange's Member Firm Regulation as a possible due diligence violation.

Finally, as part of the proposed rule change, the Exchange has developed automated systems to surveil for limit order display violations and an automated Specialist Limit Order Display Report that will detail, should the proposed rule change be approved, instances when a specialist held an open customer order to buy or sell at a price that was superior to the

¹⁵ See Securities Exchange Act Release No. 49797 (June 3, 2004) 69 FR 32637 (June 10, 2004)(Notice of Filing and Immediate Effectiveness of File No. SR-Amex-2004-41).

specialist's posted quote and did not either execute or display the order in compliance with the proposed rule change. The Exchange believes implementing these enhancements will be beneficial for the marketplace by requiring the immediate display of customer limit orders that better the posted quote.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act,¹⁶ in general, and furthers the objectives of Section 6(b)(5),¹⁷ 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.

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

The proposed rule change will impose no burden on competition.

¹⁶ 15 U.S.C. 78f(b).

¹⁷ 15 U.S.C. 78f(b)(5).

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

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

- (A) by order approve such proposed rule change, as amended, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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. Please include File Number SR-Amex-00-27 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-00-27. 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-00-27 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.¹⁸

Margaret H. McFarland
Deputy Secretary

¹⁸ 17 CFR 200.30-3(a)(12).