

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-50326; File No. SR-Amex-2004-51)

September 7, 2004

Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change by the American Stock Exchange LLC to Apply the Current Member Firm Guarantee in Equity Options to Index Options

On June 30, 2004, the American Stock Exchange LLC (“Amex” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to amend Commentary .02(d) to Amex Rule 950(d) to extend the Exchange’s current member firm guarantee in facilitation cross transactions to index options. The proposed rule change was published for comment in the Federal Register on July 30, 2004.³ The Commission received no comments on the proposal.

Pursuant to Commentary .02 to Amex Rule 950(d), a floor broker representing a member firm seeking to facilitate its own public customer’s order is entitled to a participation guarantee of 20% if the order is traded at the best bid or offer (“BBO”) provided by the trading crowd, or 40% if the order is traded at a price that improves the trading crowd’s market, i.e., at a price between the BBO.⁴ These participation guarantees currently apply only to transactions in equity

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 50081 (July 26, 2004), 69 FR 45856 (July 30, 2004) (“Notice”).

⁴ These guarantees apply only when the original order is equal to or larger than 400 contracts, or other eligible size as established by the Exchange, but in no case less than 50 contracts. See Commentary .02(d)(1)-(2) to Amex Rule 950(d).

options. The Exchange proposes to amend Commentary .02(d) to provide the same participation guarantees for transactions in index options.⁵

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,⁶ and, in particular, the requirements of Section 6(b)(5) of the Act.⁷ The Commission believes that participation guarantees are reasonable and within the business judgment of the Exchange, as long as they do not restrict competition and do not harm investors. The Commission has found, with respect to participation guarantees in other contexts, that guarantees of as much as 40% of an order in options trading are not inconsistent with statutory standards of competition and free and open markets.⁸

The Commission notes that, pursuant to Commentary .02(d) to Amex Rule 950(d), if a facilitation trade takes place in a situation in which the specialist is entitled to a participation guarantee, the total number of contracts guaranteed to be allocated to the floor broker and the specialist in the aggregate shall not exceed 40% of the facilitation transaction.⁹

⁵ All other rules that apply to participation guarantees for transactions in equity options would also apply to transactions in index options. See Notice.

⁶ In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁷ 15 U.S.C. 78f(b)(5).

⁸ See, e.g., Securities Exchange Act Release No. 42455 (February 24, 2000), 65 FR 11388 (March 2, 2000) at 11398.

⁹ See Commentary .02(d)(3) to Amex Rule 950(d). In such a situation, if the facilitation transaction occurs at the specialist's bid or offer, the specialist shall be allocated the greater of either (1) 20% of the executed contracts if the facilitating floor broker has participated in 20% of the executed contracts or (2) a share of the executed contracts that have been divided equally among the specialist and other participants to the trade. In each case, the specialist's participation allocation shall only apply to the number of

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act¹⁰, that the proposed rule change (File No. SR-Amex-2004-51) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland
Deputy Secretary

contracts remaining after all public customer orders and the floor broker's facilitation order have been satisfied. See id.

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 17 CFR 200.30-3(a)(12).