

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-55068; File No. SR-Amex-2006-17)

January 9, 2007

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Relating to Procedures for At-Risk Cross Transactions

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on February 17, 2006, 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 substantially prepared by the Amex. On November 9, 2006, the Exchange filed Amendment No. 1 to the proposed rule change.³ On December 1, 2006, the Exchange filed Amendment No. 2 to the proposed rule change.⁴ 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 Amex proposes to revise the procedures applicable to cross transactions in equity options to provide procedures for at-risk cross transactions. The text of the proposed rule change

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 renamed the proposed procedure for equity options as “at-risk” cross transactions; provided that the eligible order size would be at least 50 contracts; clarified certain descriptions of the proposal in Section II.A.1 below; and made minor revisions to the text of the proposed rule change. Amendment No. 1 replaced and superseded the original filing in its entirety.

⁴ Amendment No. 2 revised the proposed rule text to clarify that, under Commentary .02(c) of Amex Rule 950—ANTE(d), the member, on behalf of the public customer whose order is subject to facilitation, must establish priority consistent with the Exchange’s

is available at the Amex, on the Amex's Web site at <http://amex.com>, and at the Commission's Public Reference Room.

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 IV below. The Amex 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 provide an alternative crossing procedure to supplement the existing facilitation cross procedure in Commentary .02 to Amex Rule 950—ANTE(d). In this manner, the Amex would permit "at-risk" cross transactions by member firms.

The proposal would establish an at-risk crossing procedure in equity options that permits a floor broker, after satisfying all public customer orders, to execute an at-risk cross on behalf of a member organization trading against its own customer's order between the quoted market once priority has been established. Currently, floor brokers are required to follow the facilitation crossing procedure set forth in Commentary .02(c) to Amex Rule 950—ANTE(d),⁵ whereby the

customer priority rules. Amendment No. 2 also made a technical correction to the Purpose section of the proposed rule change.

⁵ Telephone conversation between Jeffrey Burns, Vice President and Associate General Counsel, Amex; and Ira Brandriss, Special Counsel, and Sara Gillis, Attorney, Division of Market Regulation, Commission, on January 4, 2007. Certain additional technical

floor broker representing the member organization must improve the quoted market on behalf of its customer to cross or facilitate the order. Notwithstanding the procedures set forth in Commentary .02(c), as described above, Commentary .02(d) to Amex Rule 950—ANTE(d) sets forth conditions and procedures by which the member firm facilitating the order is entitled to participate from its proprietary account as the contra-side of that order to the extent of 40 percent of the remaining contracts, provided the order trades at or between the quoted market.

The purpose of the proposed revision is to provide floor brokers with a greater incentive to attract and maintain order flow on the Exchange by permitting at-risk cross transactions in between the quoted market. With an at-risk cross transaction, a customer order has the opportunity for price improvement that does not always exist under the Exchange's current facilitation cross procedure because, under the proposed at-risk cross provisions, the floor broker must cross at a price at least one minimum price variation ("MPV") better than the best price communicated by the trading crowd. In addition, the at-risk cross procedure will provide the trading crowd with either the opportunity to buy or sell the entire customer order when represented, or trade against the member firm's quote, which will be at risk to the market.

A facilitation order is currently defined by Amex Rule 950-ANTE(e) as "an order which is only executed, in whole or in part, in a cross transaction with an order for a public customer of the member organization." Commentary .02 to Amex Rule 950-ANTE(d) provides the current procedure for executing facilitation cross transactions. According to the Commentary, a floor broker holding an order for a member firm's public customer and a facilitation order is permitted

corrections were made throughout the discussion of the proposed rule change pursuant to the January 4, 2007 telephone conversation with Amex staff.

to cross the orders if: (1) the floor broker discloses on its order ticket for the public customer order which is subject to facilitation, all the terms of such order, including, if applicable, any contingency involving other options, underlying securities, or related securities; (2) the floor broker requests bids and offers for the option series subject to facilitation, then discloses the public customer order and any contingency respecting such order which is subject to facilitation and identifies the order as being subject to facilitation; and (3) after providing an opportunity for such bids and offers to be made, the floor broker on behalf of the public customer whose order is subject to facilitation, either bids above the highest bid or offers below the lowest offer on the market. After all other market participants are given an opportunity to accept the bid or offer made on behalf of the public customer whose order is subject to facilitation, the floor broker may then cross all or any remaining part of such order and the facilitation order at such customer's bid or offer by announcing in public outcry that he is crossing such orders stating the quantity and price(s).

In cases where a floor broker is seeking to facilitate its own public customer order, Commentary .02(d)(1) to Amex Rule 950-ANTE(d) provides that the member firm is entitled to participate in the firm's proprietary account as the contra-side of that order up to 40 percent of the remaining contracts (the "Member Firm Guarantee"), provided that the order trades at a price that matches or improves the market, after public customer orders on the specialist's book or customer orders represented by a floor broker in the crowd have been filled. This Member Firm Guarantee provides, under certain conditions, the ability to cross 40 percent of the customer order on behalf of a member organization before the specialist and/or registered options traders 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, although the size may not be for fewer than 50 contracts. Under the proposal, the Member Firm Guarantee will remain unchanged. However, an at-risk cross transaction will not be subject to the Member Firm Guarantee.

The Amex proposes to adopt at-risk crossing procedures by revising its current facilitation cross procedures in two parts. First, the Exchange proposes to change the definition of “facilitation order” such that floor brokers may choose which procedure to use, either the facilitation or the at-risk cross procedure. Amex Rule 950-ANTE(e)(iv) defines a facilitation order as an “order which is only executed, in whole or in part, in a cross transaction with an order for a public customer of the member organization” (emphasis added). The proposed rule change would revise the definition so that it is “an order which may be executed in a cross transaction with an order for a public customer of the member organization” (emphasis added). Allowing for this change would provide floor brokers with the ability to continue using the facilitation cross procedure set forth in Commentary .02(d) to Amex Rule 950-ANTE(d).

Second, the Exchange proposes the following procedure for the use of members who choose to execute at-risk cross transactions. The at-risk cross transaction procedure may only be used by floor brokers attempting to cross an order of a public customer from the same member organization.⁶ Floor brokers will be required to take the following steps:

- Disclose on its order ticket for the public customer order which is subject to the cross, all the terms of the order, including, if applicable, any contingency involving other options, underlying securities or related securities;

⁶ The minimum eligible order size for the at-risk cross transaction will be 50 contracts.

- The floor broker must request bids and offers for all components of the customer order;
- In response to the quoted market from the trading crowd, the floor broker, on behalf of the member organization, must first represent the public customer order to the trading crowd as customer providing the side, size and a price of the order, giving the customer an opportunity for price improvement;
 - Once the trading crowd has provided a quote in response to the customer order, it will remain in effect until: (i) a reasonable amount of time has passed, (ii) there is significant change in the price of the underlying security or (iii) the market given in response to the request has been improved. In the case of a dispute, the term “significant change” will be interpreted on a case-by-case basis by two Floor Officials based upon the extent of the recent trading in the option and in the underlying security and any other relevant factors;
 - In response to the trading crowd’s quoted market, the floor broker may on behalf of the member organization improve the quoted market establishing priority; and
 - The floor broker may then attempt to consummate a cross transaction at risk to the market by bidding or offering on behalf of the member firm at one MPV away from the public customer order.⁷

The following is an example of how the at-risk cross procedure will operate. Assume that the posted market at the Amex is 1.00-bid/1.15-offer for 250 contracts. A customer has a limit

⁷ The Exchange has represented that if there is a public customer order on the book or represented in the trading crowd that has priority over the at-risk cross, the member firm may only participate in those contracts remaining after the public customer’s order has been filled. Telephone conversation between Jeffrey Burns, Vice President and Associate

order to buy 500 contracts at 1.10. The floor broker enters the trading crowd and requests a larger size market and receives 1.00-bid/1.15-offer for 500 contracts. In response to the trading crowd's market, the floor broker bids 1.05 for 500 contracts for the customer.

Absent the specialist and/or Registered Options Traders selling to the customer at 1.05, thereby improving the customer's limit price, or improving the offer to 1.10 in response to the customer bid, the floor broker may then make a better offer on behalf of the member organization at 1.10 establishing priority. At this point, the floor broker could invoke the Member Firm Guarantee at 1.10 and would be unable to employ the at-risk crossing procedure.

The floor broker may then attempt to cross the customer order at 1.10. In the process of attempting the cross, the crowd could still "break up" the cross by selling to the customer's 1.05 bid or buying the firm's 1.10 offer, which is "at-risk". As a result, the customer is provided the opportunity to pay 1.05 and achieve price improvement while the marketplace is provided an opportunity for the trading crowd to purchase the firm's offer at 1.10. The member firm effectively relinquishes its guaranteed participation rights (i.e., the Member Firm Guarantee) in an attempt to cross the entire order.

The Exchange believes that the proposed at-risk cross procedure better supports the auction market and provides an opportunity for customers to achieve meaningful price improvement that otherwise may not occur when a member firm is forced to use the current facilitation procedure to interact with its customer's order. Under the current facilitation cross procedure, the floor broker (in the above example) would request a market from the trading

crowd and then facilitate the customer order at 1.10 subject to the Member Firm Guarantee. As proposed, in response to the trading crowd's quoted market, the floor broker may determine which procedure best represents the customer and the member firm.

For a floor broker to use the at-risk cross procedure outlined above, the floor broker must be attempting to cross an order of a public customer from the same member organization. Once the cross transaction has occurred, the order cannot then be broken up by a superior bid or offer from the trading crowd.

As noted above, the Exchange proposes to revise the procedures applicable to cross transactions in equity options to provide procedures for at-risk cross transactions. The purpose of the proposed revision is to provide floor brokers with a greater incentive to attract and maintain order flow on the Exchange and improve the auction marketplace because the at-risk cross procedure allows floor brokers the ability to cross transactions in between the quoted market. The Exchange believes that the at-risk cross procedure will also encourage price improvement because the trading crowd will have a greater incentive to make larger, tighter markets in response to customer orders that it wants to trade against.

Section 11(a)(1) of the Act⁸ makes it unlawful for a member of an exchange to effect a transaction for its own account on that exchange unless a specific exception applies. The exceptions are set forth in Section 11(a)(1) and in various rules adopted by the Commission subsequent to the enactment of Section 11. In connection with the use of affiliated or "house" floor brokers by Amex members, Section 11(a)(1)(G) of the Act provides an exemption from the prohibitions of Section 11(a) for transactions effected for a member's own account ("G Orders")

⁸ 15 U.S.C. 78k(a)(1).

if the member meets a business mix test that requires it to be primarily engaged in the business of underwriting and distributing securities, selling securities to customers and/or acting as a broker and provided more than 50 percent of its gross revenues is derived from such businesses and related activities.⁹ However, all G Orders must yield priority to any bid or offer at the same price for the account of a person who is not, or is not associated with, a member. Therefore, if a G Order is entered by a floor broker as part of an at-risk cross transaction, the G Order will not be permitted an execution ahead of any non-member order on the book.¹⁰

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act¹¹ in general and furthers the objectives of Section 6(b)(5)¹² in particular in that it is designed to perfect the mechanisms of a free and open market and the national market system, protect investors and the public interest, to foster cooperation and coordination with persons engaged in facilitating transactions in securities and promote just and equitable principles of trade.

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

The proposed rule change will impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

⁹ Rule 11a1-1(T)(b) under the Act provides additional guidance to members seeking to meet the business mix test requirements of Section 11(a)(1)(G)(i). 17 CFR 240.11a1-1(T).

¹⁰ Because the ANTE System is not programmed to recognize "G" orders and provide for the order to yield to all non-member accounts, affiliated floor brokers are prohibited from sending "G" orders in options into the ANTE System. This prohibition is necessary in order to prevent a violation of Section 11(a)(1) of the Act by a member using an affiliated broker to represent a "G" order.

¹¹ 15 U.S.C. 78f(b).

¹² 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 by the Exchange on this proposal.

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, 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-2006-17 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-Amex-2006-17. 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 the 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-2006-17 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.¹³

Florence E. Harmon
Deputy Secretary

¹³ 17 CFR 200.30-3(a)(12).