

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-43942; File No. SR-Amex-2006-38)

June 5, 2006

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto Relating to Locked Markets

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 4, 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 prepared by the Exchange. On May 25, 2006, the Exchange submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and is granting accelerated approval to the proposed rule change, as amended.

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

The Exchange proposes to permit Exchange options quotations that lock the quotations of specialists, registered options traders (“ROTs”), supplemental registered options traders (“SROTs”) or remote registered options traders (“RROTs”) to be disseminated and executed after a short “counting period.”<sup>4</sup> Amex seeks accelerated approval of the proposed rule change and a retroactive effective date of April 27, 2006.

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

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

<sup>3</sup> Amendment No. 1 replaced and superseded the original filing in its entirety.

<sup>4</sup> Telephone conversation between Jeffrey Burns, Vice President and Associate General Counsel, Amex, and Terri Evans, Special Counsel, Division of Market Regulation, Commission, on May 30, 2006.

The text of the proposed rule change is available on the Amex's website at <http://www.amex.com>, the Office of the Secretary, the Amex 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 Exchange included statements concerning the purpose of and basis for the proposed rule change, as amended, and discussed any comments it received on the proposed rule change, as amended. 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposal is to permit the Exchange's ANTE system to execute orders on locked market quotes (i.e. 2.00 bid/2.00 offer), after a short period of time. This proposal would revise current Commentary .01 to Rule 951—ANTE by eliminating the requirement that the ANTE system revise the bid or offer by at least one (1) minimum price variation so that the bid or offer does not lock the ABBO.<sup>5</sup> The "counting period" or time period that will be required for a quote(s) to exist before an execution on that quote may occur will be one (1) second.

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<sup>5</sup> Current Commentary .01 to Rule 951—ANTE provides that if the bid or offer of a specialist, ROT, SROT or RROT locks or crosses the Amex best bid or offer ("ABBO"), the ANTE System will either (i) revise the bid by one or more minimum price variations lower than the bid submitted or revise the offer by one or more minimum price variations higher than the offer submitted, so that the bid or offer submitted does not lock or cross the ABBO; or (ii) if the ABBO represents an off-floor limit order, the ANTE System will execute the order and allocate the trade pursuant to the post trade allocation process.

Because in ANTE the specialist, ROTs, SROTs<sup>6</sup> and RROTs<sup>7</sup> may simultaneously enter quotes,<sup>8</sup> there may be instances where quotes may become locked. Under the proposal, the Exchange would disseminate the locked market and both quotations (bid and offer) would be deemed “firm” disseminated market quotations. Once the specialist and/or ROT, SROT, or RROT quotations become locked, a “counting period” would begin during which the specialist and/or ROT, SROT or RROT whose quotations are locked may eliminate the locked market. Such specialist and/or ROT, SROT or RROT would be obligated to execute orders at their disseminated quotation. During the “counting period,” specialists and ROTs in the trading crowd in which the option that is the subject of the locked market is traded will continue to be obligated to respond to floor brokers as set forth in Amex Rules 958 - ANTE (c) and 950 – ANTE (l) and would continue to be obligated for one contract in open outcry to other ROTs and specialists.<sup>9</sup> In addition, during the counting period all locked markets with respect to the

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<sup>6</sup> “SROT” means a ROT that is a member organization so designated by the Exchange which is granted remote quoting rights to enter bids and offers electronically from off the Exchange's physical trading floor. See Amex Rule 900—ANTE(b)(50).

<sup>7</sup> “RROT” means a ROT that is member or member organization so designated by the Exchange which is awarded remote quoting rights to enter bids and offers electronically from locations other than the trading crowd where the applicable options class is traded on the Exchange's physical trading floor. See Amex Rule 900—ANTE(b)(51).

<sup>8</sup> The commencement of the Exchange’s recently approved SROT and RROT programs will increase the simultaneous entry of quotes by multiple ROTs thereby increasing the likelihood of locked markets. The Exchange’s SROT and RROT programs were recently approved by the Commission on April 12, 2006 and April 13, 2006, respectively. See Securities Exchange Act Release Nos. 53635 (April 12, 2006), 71 FR 20144 (April 19, 2006)(order approving the SROT program) and 53652 (April 13, 2006), 71 FR 20422 (April 20, 2006)(order approving the RROT program).

<sup>9</sup> See Amex Rule 958A—ANTE.

specialist, ROTs, SROT and RROT will be immediately accessible and automatically executable pursuant to 933–ANTE. The “counting period” will be one (1) second.

If at the end of the counting period the quotations remain locked, the ANTE system would automatically execute the quotations against each other and allocate the contracts pursuant to Rule 935—ANTE. For example, if the market is 2 bid for 10 contracts and 2 offered for 20 contracts, after the “counting period” terminates, the ANTE system will execute the quotations against each other so that the remaining quote becomes 2 offered for 10 contracts. In addition, the quotation that is locked may be executed by another order during the “counting period.”

The Exchange will not disseminate an internally crossed market (i.e. 2.10 bid/2.00 offer). If a specialist, ROT, SROT or RROT submits a quotation that would cross an existing quotation, the Exchange will: (i) change the incoming quotation such that it locks the existing quotation; (ii) send a notice to the specialist, ROT, SROT, or RROT that submitted the existing quotation indicating that its quotation was crossed; and (iii) send a notice to the specialist, ROT, SROT or RROT that submitted the incoming quotation, indicating that its quotation crossed the existing quotation and was changed. Such a locked market would then be handled in accordance with proposed paragraph (a) to Commentary .01 of Rule 951—ANTE concerning locked markets. During the counting period, if the existing quotation is cancelled subsequent to the time the incoming quotation is changed, the incoming quotation will be automatically restored to its original terms.

The Exchange believes that the proposal is necessary for maintaining order flow and competitiveness with the other options exchanges. Both the Chicago Board Options

Exchange, Inc. (“CBOE”)<sup>10</sup> and the Philadelphia Stock Exchange, Inc. (“Phlx”)<sup>11</sup> have adopted similar proposals to execute locked markets.

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act<sup>12</sup> in general and furthers the objectives of Section 6(b)(5)<sup>13</sup> in particular in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

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

According to the Exchange, the proposed rule change, as amended, does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

Written comments were neither solicited nor received with respect to the proposed rule change, as amended.

## III. 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.

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<sup>10</sup> See Securities Exchange Act Release No. 47959 (May 30, 2003), 68 FR 34441 (June 9, 2003).

<sup>11</sup> See Securities Exchange Act Release No. 50100 (July 27, 2004), 69 FR 46612 (August 3, 2004).

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

<sup>13</sup> 15 U.S.C. 78f(b)(5).

Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form at <http://www.sec.gov/rules/sro.shtml>; or
- Send an e-mail to *rulecomments@sec.gov*. Please include File Number SR-Amex-2006-38 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-2006-38. 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 at <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, as amended, 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, 100 F Street, NE., Washington, DC 20549. 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-2006-38

and should be submitted on or before [insert date 21 days from publication in the Federal Register].

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

The Commission finds that the proposed rule change, as amended, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>14</sup> Specifically, the Commission believes the proposal is consistent with Section 6(b)(5) of the Act,<sup>15</sup> which requires that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest.

The Commission believes that the proposed rule is consistent with Rule 602,<sup>16</sup> the Commission's Quote Rule. The Commission notes that during the counting period specialists, ROTs, SROTs, and RROTs whose quotes are locked would remain obligated to execute customer and broker-dealer orders eligible for automatic execution at the locked price. The Commission also notes that specialists and other market makers whose quotes are locked against each other would continue to be obligated under the Quote Rule for at least one contract to each other during the counting period. If at the end of the counting period the quotes remain locked, the quotes would execute against each other. Accordingly, the Commission believes that the proposal provides a reasonable method for specialists, ROTs, SROTs, and RROTs that lock a market to unlock the market.

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<sup>14</sup> In approving this proposed rule change, as amended, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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

<sup>16</sup> 17 CFR 242.602.

The Commission finds good cause for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice of filing thereof in the Federal Register. The Commission notes that the proposed rule change, as amended, is substantially similar to CBOE Rule 6.45A(d) and Phlx Rule 1082, Commentaries .02 and .03 and raises no new regulatory issues. Accordingly, the Commission believes that it is consistent with Section 19(b)(2) of the Act<sup>17</sup> to approve the proposed rule change, as amended, on an accelerated basis effective April 27, 2006.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act<sup>18</sup> that the proposed rule change (SR-Amex-2006-38), as amended, is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>19</sup>

Nancy M. Morris  
Secretary

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<sup>17</sup> 15 U.S.C. 78s(b)(2).

<sup>18</sup> 15 U.S.C. 78s(b)(2).

<sup>19</sup> 17 CFR 200.30-3(a)(12).