

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-55875; File No. SR-Amex-2006-17)

June 7, 2007

Self-Regulatory Organizations; American Stock Exchange LLC; Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1, 2, 3, and 4 Thereto, Relating to Procedures for At-Risk Cross Transactions

I. Introduction

On February 17, 2006, 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 adopt a new crossing procedure, the “at-risk cross,” as an alternative to the Exchange’s existing facilitation cross procedure. On November 9, 2006, the Exchange filed Amendment No. 1 to the proposed rule change, and on December 1, 2006, the Exchange filed Amendment No. 2 to the proposed rule change. The proposed rule change, as modified by Amendment Nos. 1 and 2, was published for comment in the Federal Register on January 17, 2007.³ On March 28, 2007, the Exchange filed Amendment No. 3 to the proposed rule change, and on May 3, 2007, the Exchange filed Amendment No. 4 to the proposed rule change. Amendment Nos. 3 and 4 to the proposed rule change were published for comment in the Federal Register on May 14, 2007 for a 15-day comment period.⁴ The comment period ended on May 29, 2007. The Commission

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 55068 (January 9, 2007), 72 FR 2044 (“Notice”).

⁴ See Securities Exchange Act Release No. 55719 (May 3, 2007), 72 FR 27155 (“Notice of Amendment Nos. 3 and 4”).

received no comments on the proposal. This order grants accelerated approval to the proposed rule change, as modified by Amendment Nos. 1, 2, 3, and 4.

II. Description of the Proposal

The Exchange proposes to adopt an “at-risk cross” procedure for equity options by adding Commentary .03 to Amex Rule 950—ANTE(d). This new “at risk cross” procedure would supplement the existing facilitation cross procedure set forth in Commentary .02 to Amex Rule 950—ANTE(d).⁵ The proposed at-risk crossing procedure would permit a floor broker, after satisfying all public customer orders, to execute a cross that is at-risk to the market on behalf of a member organization trading against its own customer’s order between the quoted market, once priority has been established.

The at-risk cross transaction procedure would be available for use only by floor brokers attempting to cross an order of a public customer against an order from the same member organization, and the minimum eligible order size for the at-risk cross transaction would be 50 contracts. A floor broker attempting to execute an order as an at-risk cross would be required first to request bids and offers from the trading crowd for all components of the public customer order.⁶ After the trading crowd has provided a quote, the floor broker would then represent the customer order to the trading crowd, indicating that it is a customer order and providing the

⁵ Commentary .02(c) to Amex Rule 950—ANTE(d) sets forth the facilitation cross procedures for options trading generally. Commentary .02(d) to Amex Rule 950—ANTE(d) sets forth conditions and procedures by which a member firm facilitating its own public customer’s order is entitled to participate from its proprietary account as the contra-side of that order to the extent of 40 percent of the contracts remaining after public customers have been satisfied, provided the order trades at or between the quoted market.

⁶ The floor broker would be required to disclose on the order ticket for the public customer order all the terms of the order, including, if applicable, any contingency involving other options, underlying securities, or related securities.

order's size, side of the market, and a price, giving the customer the opportunity for price improvement.

After the trading crowd has provided a quote in response to the customer order, the proposed rule would permit the floor broker to improve the trading crowd's quote on behalf of the member organization and thereby establish priority over the trading crowd at this new price.⁷ The bid or offer on behalf of the member organization would be required to be one minimum price variation ("MPV") away from the customer order. The floor broker could then attempt to consummate a cross transaction with the customer at that price. However, the cross transaction would be "at risk" to the market, because the trading crowd would still have the ability to break up the cross before its consummation, either by trading with the customer order at the customer's price or trading with the member organization's order at its attempted cross price.

Under the Exchange's existing facilitation crossing procedures, a member firm seeking to facilitate its own public customer's order 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.⁸ Under the proposed at-risk crossing procedure, the floor broker on behalf of the member firm effectively would relinquish the Member Firm Guarantee in an attempt to cross the entire order.

III. Discussion

⁷ At this point, the floor broker may alternatively decide to follow the procedures of Commentary .02(d) to Amex Rule 950-ANTE(d).

⁸ See Commentary .02(d)(1) to Amex Rule 950-ANTE(d).

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with Section 6(b)(5) of the Act,⁹ which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, 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.¹⁰

The Commission believes that the proposed at-risk cross procedure is consistent with the Act in that it is intended to provide public customer orders with additional opportunity for price improvement without affording unfair advantage to the member firms that submit such customer orders and seek to trade against them. Under the proposal, a floor broker may attempt to cross a public customer order entirely against an order from the member firm from which it originated only after the floor broker, on behalf of the member firm, improves the price quoted to the customer by the trading crowd, and thereafter affords the crowd an opportunity to break up the cross by improving the price still one MPV better. Moreover, the trading crowd alternatively could break up the attempted cross by trading with the member firm's order at the member firm's price.

In addition, the Commission believes that the at-risk cross procedure may encourage the members of the trading crowd to put forth their best bids or offers when the customer order is first presented to the crowd. This is because the floor broker would be able to establish priority

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

by improving the trading crowd's quoted market, and then would be permitted to cross the entire order at the improved price. Accordingly, the Commission believes that members of the trading crowd will have a greater incentive to make larger, tighter markets in response to customer orders, thereby improving the auction market.

The Commission notes further that if a public customer order either on the book or represented in the trading crowd has priority over the at-risk cross, the member firm would be permitted to participate only in those contracts remaining after the public customer's order has been filled.¹¹ In addition, if there is a public customer order on the book or represented in the trading crowd on the same side of the market as, and priced at or better than, the public customer order that is part of the at-risk cross, the public customer order on the book or represented in the trading crowd would have priority.¹²

The Commission also finds that the Exchange's at-risk cross proposal is consistent with Section 11(a) under the Act.¹³ The Commission notes that orders relying on the exemption provided by Section 11(a)(1)(G) of the Act (for "G Orders")¹⁴ from the prohibitions of Section 11(a) may be executed as an at-risk cross only if the requirements of Section 11(a)(1)(G) are met. Specifically, the Exchange has noted that 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 to execute ahead of any non-member order on the book.¹⁵

¹¹ See Commentary .03 to Amex Rule 950—ANTE(d) and Notice, supra note 3, at n.7. See also Notice of Amendment Nos. 3 and 4, supra note 4.

¹² See Notice of Amendment Nos. 3 and 4, supra note 4.

¹³ 15 U.S.C. 78k(a).

¹⁴ 15 U.S.C. 78k(a)(1)(G).

¹⁵ See Notice, supra note 3.

The Commission finds good cause for approving the proposed rule change, as amended, prior to the thirtieth day after publishing notice of Amendment Nos. 3 and 4 in the Federal Register. The Commission notes that the proposal, as modified by Amendment Nos. 1 and 2, was published for a full notice and comment period,¹⁶ and that the Commission received no comment letters on the proposal. Further, Amendment Nos. 3 and 4 were published for a 15-day comment period, and the Commission received no comment letters. Amendment No. 3 made technical and clarifying changes and confirmed previous verbal representations made by the Exchange. The Commission believes that these clarifications serve to enhance the proposal and raise no new or novel issues. Amendment No. 4 proposed to permit the at-risk crossing procedure to apply to options classes that are part of the options penny pilot program (“penny pilot options”).¹⁷ The Commission believes that orders in the penny pilot options should be afforded the same potential for price improvement through the at-risk cross procedure as other options classes, and that applying the at-risk cross procedure to penny pilot options raises no additional significant regulatory issues that were not considered in the original proposal. Therefore, the Commission believes that no purpose is served by delaying approval of the proposal, as amended. Accordingly, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,¹⁸ to approve the proposal, as modified by Amendment Nos. 1, 2, 3, and 4, on an accelerated basis.

¹⁶ See id.

¹⁷ See Securities Exchange Act Release No. 55162 (January 24, 2007), 72 FR 4738 (February 1, 2007) (SR-Amex-2006-106). Amendment No. 4 also made non-substantive rule text changes and showed the text of the final proposal as marked against the current text of Amex Rule 950-ANTE(d).

¹⁸ 15 U.S.C. 78s(b)(2).

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹⁹ that the proposed rule change (SR-Amex-2006-17), as modified by Amendment Nos. 1, 2, 3, and 4, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁰

Florence E. Harmon
Deputy Secretary

¹⁹ 15 U.S.C. 78s(b)(2).

²⁰ 17 CFR 200.30-3(a)(12).