

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-49441; File No. SR-Amex-2003-44)

March 17, 2004

Self-Regulatory Organizations; American Stock Exchange LLC; Order Granting
Approval to Proposed Rule Change Relating to Percentages Used to Allocate Executed
Options Contracts Between the Specialist and Registered Options Traders

On May 14, 2003, the American Stock Exchange LLC ("Amex") 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 Amex Rules 933 and 950 to revise the percentages used to allocate executed contracts between the specialist and registered options traders in certain trades executed on the Exchange.³ On November 18, 2003, Amex filed Amendment No. 1 to the proposed rule change.⁴ The proposed rule change was published for comment in the Federal Register on December 31, 2003.⁵ The Commission received no comments on the proposal.

The Exchange proposes to revise the allocation percentages set forth in Amex Rules 933 and 950, by which options contracts in certain options trades are allocated as between the specialist and registered options traders,⁶ in connection with the re-institution

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In addition, the Exchange proposed to correct the paragraph reference to the allocation provisions in Amex Rule 933 from (d) to (h).

⁴ 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 November 17, 2003.

⁵ See Securities Exchange Act Release No. 48975 (December 23, 2003), 68 FR 75667 ("Notice").

⁶ Specifically, the proposed rule change relates to the allocation of contracts

of an exchange-sponsored payment-for-order-flow program.⁷ The proposed rule change would revise the percentages allocated to the specialist and the registered options traders, respectively, for those options classes in which the Exchange does not collect a marketing fee from registered options traders for a payment-for-order-flow program.⁸ For those options classes in which the Exchange collects a marketing fee from registered options traders for a payment-for-order-flow program, the allocation percentages would comply with the percentages currently in place.⁹ Further, for options in which no payment-for-order-flow marketing fee is collected from the registered options traders, the Exchange proposes to vary the specialist and registered options trader allocation percentages depending on the type of option. Specifically, the allocation percentages for trading in options on Exchange Traded Funds, Trust Issued Receipts, and indexes would differ somewhat from those used for equity options.¹⁰

when the specialist and registered options traders are on parity, as governed by Commentary .06 to Amex Rule 950(d); the allocation of trades through Quick Trade, the Exchange's automated allocation feature, as governed by Commentary .07 to Amex Rule 950(d); and the allocation of trades by AutoEx, the Exchange's automatic execution system, as governed by Amex Rule 933(d), renumbered by this proposal as Amex Rule 933(h).

⁷ See Securities Exchange Act Release No. 48053 (June 17, 2003), 68 FR 37880 (June 25, 2003) (File No. SR-Amex-2003-50).

⁸ See Notice for a more complete description of the revisions. The allocation percentages would vary depending on the type of option, i.e., whether it is an equity option or an option on an Exchange Traded Fund, Trust Issued Receipt, or index.

⁹ In this case, there would be no distinction in the allocation percentages between equity options and options on Exchange Traded Funds, Trust Issued Receipts, and indexes.

¹⁰ See Notice for a more complete description of the revisions.

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,¹¹ and, in particular, the requirements of Section 6(b)(5) of the Act.¹² Specifically, the Commission believes that the Exchange's proposed revisions to its specialist participation guarantees to account for whether or not the Exchange has instituted a payment-for-order-flow program are appropriate, particularly as they do not alter the Exchange's requirement that the specialist's participation percentage be limited to 40% (60% when there is only one registered options trader on parity with the specialist or signed on to AutoEx or Quick Trade).¹³ The Commission has found with respect to participation guarantees in other contexts that a maximum guarantee of 40% (where more than one trader is participating with the specialist) is not inconsistent with statutory standards of competition and free and open markets.¹⁴

¹¹ 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).

¹² 15 U.S.C. 78f(b)(5).

¹³ The Commission notes that, in the context of a trade in which a member firm is facilitating a customer order, the total number of contracts guaranteed to the member firm and the specialist in the aggregate may not exceed 40% of the total transaction. See Amex Rule 950(d), Comm. 02(d)(3).

¹⁴ See, e.g., Securities Exchange Act Release Nos. 42455 (February 24, 2000), 65 FR 11388 (March 2, 2000) at 11398; and 43100 (July 31, 2000), 65 FR 48778 (August 9, 2000) at notes 96-99 and accompanying text.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act¹⁵, that the proposed rule change (File No. SR-Amex-2003-44) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁶

Margaret H. McFarland
Deputy Secretary

¹⁵ 15 U.S.C. 78s(b)(2).

¹⁶ 17 CFR 200.30-3(a)(12).