

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-49488; File No. SR-AMEX-2004-18)

March 26, 2004

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval to the Proposed Rule Change Relating to an Extension of the Marketing Fee Voting Procedures Pilot Program

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 March 11, 2004, the American Stock Exchange LLC (“Amex” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) a proposed rule change relating to the marketing fee voting procedures pilot program. The proposed rule change is described in Items I and II below, which the Amex has prepared. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change. The Commission is also approving the proposal on an accelerated basis.

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

The American Stock Exchange LLC (the “Amex” or the “Exchange”) proposes to extend, for an additional six (6) months, the Exchange’s marketing fee voting procedures pilot program (the “Pilot Program”).

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 had received on the proposed rule change. The text of these statements may be examined at the places specified in

¹ 15 U.S.C. 78s(b)(1).

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 Statutory Basis for, the Proposed Rule Change

1. Purpose

In June 2003, the Amex reinstated an equity option marketing fee on the transactions of specialists and registered options traders (“ROTs”) involving customer orders from firms that accept payment for directing their orders to the Exchange.³ On September 30, 2003, the Exchange adopted new voting procedures, operative on a six-month pilot basis, in connection with its reinstatement of the marketing fee program.⁴ The Pilot Program's voting procedures are set forth in Commentary .11 to Amex Rule 958. These procedures establish the voting eligibility requirements for ROTs and the manner in which ROTs may determine to discontinue their participation in the marketing fee program.

Subsequently, in December 2003, the Exchange proposed to expand the number of eligible registered options traders entitled to vote in connection with the marketing fee program. In January 2004, the Commission approved the amended ROT voter eligibility requirements as part of the Pilot Program.⁵ Based on the Exchange’s limited experience with the revised voting

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 48053 (June 17, 2003), 68 FR 37880 (June 25, 2003) (SR-Amex-2003-50).

⁴ See Securities Exchange Act Release No. 48577 (September 30, 2003), 68 FR 57943 (October 7, 2003) (SR-Amex-2003-80).

⁵ See Securities Exchange Act Release No. 49115 (January 22, 2004), 69 FR 4332 (January 29, 2004) (SR-Amex-2003-114). The Exchange’s proposal was intended to increase participation in the voting process for those ROTs that significantly concentrate their trading activity to particular option classes adjacent to each other that may have more than one (1) individual specialist. The criteria set forth in Commentary .11 to Amex Rule 958 provides that: (1) the option classes must be located in adjacent trading

procedures, the Exchange proposes that the Commission extend the Pilot Program for an additional six (6) months until September 30, 2004. During this time, the Exchange represents that it would have gained additional experience operating the Pilot Program and would be in a better position to request permanent approval.

2. Statutory Basis

The Amex believes that the rule change is consistent with Section 6 of the Act,⁶ particularly Section 6(b)(5) of the Act.⁷ The Exchange believes that the proposed rule change is intended to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

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

The Amex does not believe that the proposed rule change would 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

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

locations on the trading floor; and (2) the ROT must be continuously signed onto Auto-Ex and/or Quick Trade in those particular options classes. In order to vote, a ROT will still be required to meet the 80% contract volume and transaction requirement; however, the 80% requirement will be calculated based on the total trading activity of the ROT in multiple option classes.

⁶ 15 U.S.C. 78f.

⁷ 15 U.S.C. 78f(b)(5).

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW, Washington, DC 20549-0609. Comments may also be submitted electronically at the following e-mail address: rule-comments@sec.gov. All comment letters should refer to File No. SR-Amex-2004-18, and 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, comments may be sent in hard copy or by e-mail, but not by both methods. 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 such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR-Amex-2004-18 and should be submitted by [insert date 21 days from date of publication].

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

After careful consideration, 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, and, in particular, with the requirements of Section 6(b)(5) of the

Act.⁸ The Commission believes that the proposed extension of the Pilot Program would continue to allow ROTs to have a voice regarding whether to discontinue the marketing fee program in those option classes in which they act as market makers.

The Amex has requested accelerated approval of its proposal to extend the Pilot Program until September 30, 2004. According to the Amex, the proposal raises no novel issues and would merely extend the current Pilot Program for an additional six months until September 30, 2004. Based upon the Amex's representations, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,⁹ to approve the proposed rule change to extend the Pilot Program, prior to the thirtieth day after the date of publication of notice thereof in the Federal Register. The Commission believes that the extension of the Pilot Program will permit the Exchange to gain additional experience with its operation. Further, the Commission notes that no changes are being made to the Pilot Program other than its extension until September 30, 2004. Accordingly, the Commission is approving, on an accelerated basis, the proposed extension of the Pilot Program until September 30, 2004.¹⁰

⁸ 15 U.S.C. 78f(b)(5). Section 6(b)(5) of the Act requires 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 foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers."

⁹ 15 U.S.C. 78s(b)(2).

¹⁰ In approving the 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).

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹¹ that the six-month extension of the Pilot Program until September 30, 2004, as set forth in SR-Amex-2004-18, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Margaret H. McFarland
Deputy Secretary

¹¹ 15 U.S.C. 78s(b)(2).

¹² 17 CFR 200.30-3(a)(12).