

**SECURITIES AND EXCHANGE COMMISSION**  
**(Release No. 34-50587; SR-Amex-2004-63)**

**October 25, 2004**

**Self-Regulatory Organizations; Order Approving a Proposed Rule Change and Amendment No. 1 by the American Stock Exchange LLC Relating to Minimum Size Guarantees for Linkage Orders**

**I. Introduction**

On August 3, 2004, 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”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to modify the definitions of Firm Customer Quote Size (“FCQS”) and Firm Principal Quote Size (“FPQS”) contained in the Amex rules by changing certain minimum size guarantees for Linkage Orders to accommodate the “natural size” of quotations.<sup>3</sup> On September 10, 2004, the Amex submitted Amendment No. 1 to the proposed rule change.<sup>4</sup> Notice of the Amex’s proposed rule change, as amended, was published in the Federal Register on September 23, 2004.<sup>5</sup>

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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> The Exchange’s rule filing is intended to conform Exchange rules to an amendment to the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage (“Linkage Plan”) filed by the Amex and the other participants of the Linkage Plan and recently approved by the Commission (“Joint Amendment No. 13”). See Securities Exchange Act Release No. 50562 (October 19, 2004) (File No. 4-429).

<sup>4</sup> See Letter from Jeffery P. Burns, Associate General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated September 9, 2004 (“Amendment No. 1”). In Amendment No. 1, the Amex amended the proposed rule text to reflect a technical change.

<sup>5</sup> Securities Exchange Act Release No. 50394 (September 16, 2004), 69 FR 57110 (SR-Amex-2004-63).

No comments were received on the proposed rule change. This order approves the proposed rule change, as amended.

## **II. Description of the Proposals**

The purpose of the proposed rule change is to amend the definitions of FCQS and FPQS provided in Amex Rule 940(b) to conform them to the definitions provided in the Linkage Plan, as amended by Joint Amendment No. 13.<sup>6</sup> While the proposed rule change would maintain a general requirement in Amex Rule 940(b) that the FCQS and FPQS be at least 10 contracts, that requirement would not apply if, pursuant to its rules, the Exchange were disseminating a quotation of fewer than 10 contracts. In that case, the Amex could establish a FCQS or FPQS equal to its disseminated size, or “natural size.”

Under the proposed rule change, as with Linkage orders today, if an order is of a size eligible for automatic execution, the Amex (as the receiving options exchange) must provide an automatic execution of the Linkage order. If this is not the case (for example, the Amex’s automatic execution system is not engaged), the Exchange may allow the order to drop to manual handling. However, the Amex still must provide a manual execution for at least the FCQS or FPQS, as appropriate (in this case, the size of its disseminated quotation of less than 10 contracts).

## **III. Discussion**

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.<sup>7</sup> In particular, the Commission

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<sup>6</sup> See Joint Amendment No. 13, supra note 3.

<sup>7</sup> In approving these proposals, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

finds that the proposal, as amended, is consistent with the provisions of Section 6(b)(5) of the Act,<sup>8</sup> which requires, among other things, that a national securities exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and to 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 notes that the Amex adopted the current definitions of FCQS and FPQS, which impose a "10-up" requirement, at a time when it had rules requiring that the minimum size disseminated with a quotation be for at least 10 contracts. Consequently, if the Amex received a customer limit order for fewer than 10 contracts, the Exchange would disseminate the price of the customer limit order with a size of 10 contracts and the specialist or the trading crowd would be responsible to make up the difference. Since implementation of the Linkage Plan, the Amex has amended Exchange Rule 958A to permit the dissemination of the "natural size" of customer limit orders that are of a size of less than 10 contracts.<sup>9</sup> The Commission believes that approval of the proposed rule change will permit Amex to conform its rules relating to Linkage orders to Exchange rules that apply to non-Linkage orders and will allow the Amex to disseminate a customer limit order's "natural size," which should provide greater transparency to investors and the marketplace, and better reflect the true state of liquidity in the marketplace.

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<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> See Securities Exchange Act Release No. 48957 (December 18, 2003), 68 FR 75294 (December 30, 2003) (SR-Amex-2003-24).

#### **IV. Conclusion**

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>10</sup> that the proposed rule change (SR-Amex-2004-63), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

Jill M. Peterson  
Assistant Secretary

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<sup>10</sup> 15 U.S.C. 78s(b)(2).

<sup>11</sup> 17 CFR 200.30-3(a)(12).