

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-50843; File No. SR-Amex-2004-91)

December 13, 2004

**Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Providing \$5 Quotation Spread Parameters for Quotations Submitted Electronically to ANTE and Correcting an Inaccurate Paragraph Designation**

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 November 29, 2004, the American Stock Exchange ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Amex filed the proposal pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Amex proposes to amend Amex Rule 958-ANTE to provide for quote spread parameters of up to \$5 for quotations that are submitted electronically on the ANTE system and to correct the incorrect paragraph designation of Amex Rule 950-ANTE(e)(v). The proposed rule text is below. Italics indicate text to be added. [Brackets] indicate text to be deleted.

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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> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

## Rule 958-ANTE

## Options Transactions of Registered Options Traders

No registered options trader shall initiate an Exchange option transaction on the Floor and through the facilities of the Exchange for any account in which he has an interest except in accordance with following provisions:

(a) – (b) No change

(c) With respect to each class of options as to which he is assigned by the Exchange, a registered options trader, whenever he participates in the trading of an options class in other than a floor brokerage capacity, or is called upon by a Floor Official or a floor broker acting in an agency capacity, is required to make competitive bids and offers as reasonably necessary to contribute to the maintenance of a fair and orderly market and shall engage, to a reasonable degree under the existing circumstances, in dealings for his own account when there exists a lack of price continuity, a temporary disparity between the supply of and demand for option contracts of a particular series, or a temporary distortion of the price relationships between option contracts of the same class. Without limiting the foregoing, a registered options trader is expected to perform the following activities in the course of maintaining a fair and orderly market:

(i) If the underlying security is a stock or Exchange-Traded Fund Share, options on classes trading on the ANTE system may be quoted electronically with a difference not to exceed \$5 between the bid and offer regardless of the price of the bid. Provided, however, that the \$5 quote widths shall only apply following the opening rotation in each security and shall exclude quotes given in open outcry in ANTE classes, during which times the quote spreads must comply with the following: bidding and offering so as to create differences of no more than \$0.25

between the bid and the offer for each option contract for which the prevailing bid is less than \$2, no more than \$0.40 where the prevailing bid is \$2 but does not exceed \$5, no more than \$0.50 where the prevailing bid is more than \$5 but does not exceed \$10, no more than \$0.80 where the prevailing bid is more than \$10 but does not exceed \$20, and no more than \$1 where the last prevailing bid is more than \$20. In the event the bid/ask differential in the underlying security is greater than the bid/ask differential set forth herein, the permissible price differential for any in-the-money option series may be identical to those in the underlying security market.

If the underlying security is a Treasury bill or certificate of deposit, bidding and offering so as to create differences in premium quotations of no more than 0.06 between the bid and the offer for each option contract for which the last preceding transaction price was 0.12 or less, no more than 0.12 where the last preceding transaction price was more than 0.12 but did not exceed 1.20, and no more than 0.16 where the last preceding transaction price was more than 1.20; and

If the underlying security is a Treasury bond or Treasury note, bidding and offering so as to create differences of no more than 1/8% of the principal amount of the underlying security between the bid and the offer for each option contract for which the last preceding transaction price was 1/4% or less, no more than 1/4% where the last preceding transaction price was more than 1/4% but did not exceed 4%, and no more than 3/8% where the last preceding transaction price was more than 4%;

Provided that the Exchange may establish differences other than the above for one or more series or classes of options.

(ii) No change

(d) – (i) No change

## Rule 950

## ANTE Rules of General Applicability

(a) – (d) No Change

(e) The types of orders specified in Rule 131 and the following additional types of orders shall be applicable to Exchange option transactions:

(i) –(vi) No Change

(e)[(v)](vii) Ratio Order – A Ratio Order is a spread, straddle, or combination order in which the stated number of option contracts to buy (sell) is not equal to the stated number of option contracts to sell (buy), provided that the number of contracts differ by a permissible ratio. For purposes of this section, a permissible ratio is any ratio that is equal to or greater than one-to-three (.333) and less than or equal to three-to-one (3.00). For example, a one-to-two (.5) ratio, a two-to-three (.667) ratio, or a two-to-one (2.00) ratio is permissible, whereas a one-to-four (.25) ratio or a four-to-one (4.0) ratio is not.

(f) – (n) No Change

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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 and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV 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

Amex Rule 958-ANTE currently contains maximum spread parameters (the difference between the quoted bid and offer) applicable to specialists' and registered options traders' quotations in options. Specifically, Amex Rule 958-ANTE requires that the specialists and registered options traders bid and offer to create differences of no more than \$0.25 between the bid and the offer for each option contract for which the prevailing bid is less than \$2, no more than \$0.40 where the prevailing bid is \$2 but does not exceed \$5, no more than \$0.50 where the prevailing bid is more than \$5 but does not exceed \$10, no more than \$0.80 where the prevailing bid is more than \$10 but does not exceed \$20, and no more than \$1 where the last prevailing bid is more than \$20. The rule further provides that in the event that the bid/ask differential in the underlying security is greater than these bid/ask differential, the permissible price differential for any in-the-money option series may be identical to those in the underlying security market.

The primary purpose of the quote spread requirements is to help to maintain narrow spreads in options. The Amex believes that these requirements can have the unintended consequence of requiring specialists and registered options traders to quote at prices that are unnecessarily narrow, thereby exposing them to great risk if markets move quickly.

The Amex proposes to amend Amex Rule 958-ANTE to permit option quote spread parameters of up to \$5, regardless of the price of the bid, on quotes that are submitted electronically on the ANTE system. The \$5 quote width shall apply only to classes trading on the ANTE system and only following the opening rotation. Additionally, in open outcry, specialists and registered options traders in those same classes would be required to give verbal quotes that

comply with the legal width requirements established in Amex Rule 958-ANTE(c)(i) and set forth to specifically govern the above-mentioned exceptions to the proposed \$5 quote spread provision.

The Amex notes that in open outcry, when a floor broker requests a market, specialists and registered options traders have the ability to evaluate all pricing information publicly available prior to responding with a quote. Moreover, a specialist or registered options trader typically responds with one quote at a time, which substantially lessens the likelihood of multiple executions across different series. The ability to evaluate pricing information prior to giving a verbal quote is not a luxury that a specialist or registered options trader enjoys on the electronic side, where the specialist or registered options trader could execute numerous transactions before having the ability to adjust his or her quotes.

It is the Amex's position that the competitive market making structure of ANTE and the existence of vigorous inter-market competition provide strong incentives for market participants to quote competitively and enter quotes and orders that improve the price and depth of the market. The Amex notes that ANTE allows market makers to quote independently of the specialist, such that the Amex Best Bid and Offer is selected from an array of competitive bids and offers, rather than merely being composed of the specialist's bid and offer. The Amex believes that the ability of market makers to quote independently eradicates the need for the maximum spread parameters that currently apply.

Additionally, the Amex proposes amend Amex Rule 950-ANTE to correct an incorrect paragraph designation. On September 23, 2004, the Exchange submitted a proposal amending Amex Rules 950 and 950-ANTE to allow ratio orders, with certain permissible ratio limits, to be executed through the Amex. The proposal added paragraphs defining "Ratio Orders" to both

Amex Rules 950 and 950-ANTE. Both paragraphs were numbered (e)(v), even though the Exchange already had a rule numbered Amex Rule 950-ANTE(e)(v). Unfortunately, the Amex did not become aware of this inconsistency until after the notice for the proposal was issued.<sup>5</sup> Accordingly, the Amex seeks to correct the paragraph designation of the definition of “Ratio Orders” in Amex Rule 950-ANTE by renumbering it from paragraph (e)(v) to paragraph (e)(vii).

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>6</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>7</sup> in particular, in that it is designed to perfect the mechanisms of a free and open market and the national market system, protect investors and the public interest, and promote just and equitable principles of trade.

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

The Exchange believes that the proposed rule change will impose no 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

No written comments were solicited or received with respect to the proposed rule change.

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<sup>5</sup> See Release No. 34-50525 (October 13, 2004), 69 FR 61875 (October 21, 2004), (notice of filing and immediate effectiveness of File No. SR-Amex-2004-77).

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has designated the proposed rule change as a “non-controversial” rule change pursuant to Section 19(b)(3)(A) of the Act<sup>8</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>9</sup> Consequently, because the foregoing rule change: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>10</sup> and Rule 19b-4(f)(6) thereunder.<sup>11</sup> As required under Rule 19b-4(f)(6)(iii), the Amex provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to filing the proposal with the Commission or such shorter period as designated by the Commission.

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay specified in Rule 19b-4(f)(6). In this regard, the Amex notes that the proposed spread parameters are substantially similar to a Chicago Board Options Exchange, Inc. (“CBOE”) rule

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<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(6).

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

that the Commission approved.<sup>12</sup> In addition, the Amex believes that the renumbering of the incorrectly numbered paragraph (e)(v) in Amex Rule 950-ANTE is a change in formatting rather than a substantive change and, as such, meets the requirements of Rule 19b-4(f)(6). The Amex believes that a waiver of the 30-day pre-operative delay will allow the Amex to remain competitive with the CBOE and allow expeditious and accurate publication of the Amex's rules.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.<sup>13</sup> The Commission notes that this proposal is similar to pilot programs adopted by the International Securities Exchange, Inc. ("ISE") and the CBOE that the Commission approved on a permanent basis,<sup>14</sup> and to rule changes adopted by the Pacific Exchange, Inc. ("PCX"), the Boston Stock Exchange, Inc. ("BSE"), and the Philadelphia Stock Exchange, Inc. ("Phlx") that were effective on filing.<sup>15</sup> Neither the ISE's proposal nor the CBOE's proposal received any comments. The Commission believes that the Amex's proposal raises no new issues or regulatory concerns that the Commission did not consider in approving the ISE's and the CBOE's proposals. In addition, the Commission believes that allowing the Amex

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<sup>12</sup> See Securities Exchange Act Release No. 50079 (July 26, 2004), 69 FR 45858 (July 30, 2004) (order approving File No. SR-CBOE-2004-44) ("CBOE Order").

<sup>13</sup> For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>14</sup> See Securities Exchange Act Release No. 50015 (July 14, 2004), 69 FR 43872 (July 22, 2004) (order approving File No. SR-ISE 2003-22); and CBOE Order, supra note 12.

<sup>15</sup> See Securities Exchange Act Release Nos. 50538 (October 14, 2004), 69 FR 62105 (October 22, 2004) (notice of filing and immediate effectiveness of File No. SR-PCX-2004-89); 50669 (November 16, 2004), 69 FR 67968 (November 22, 2004) (notice of filing and immediate effectiveness of File No. SR-BSE-2004-47); and 50728 (November 23, 2004), 69 FR 69982 (December 1, 2004) (notice of filing and immediate effectiveness of File No. SR-Phlx-2004-74).

to implement \$5 quotation spread parameters like those adopted by ISE, CBOE, PCX, BSE, and Phlx will help the Amex to compete with those exchanges. The Commission also believes that revising the paragraph numbering in Amex Rule 950-ANTE will ensure that the Amex's rules are numbered correctly. For these reasons, the Commission designates that the proposal become operative immediately.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further the purposes of the Act.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an E-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Amex-2004-91 on the subject line.

##### Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609.

All submissions should refer to File Number SR-Amex-2004-91. 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 (<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 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 Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of this filing also will be available for inspection and copying at the principal office of the Amex. 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-2004-91 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority<sup>16</sup>.

Margaret H. McFarland  
Deputy Secretary

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<sup>16</sup> 17 CFR 200.30-3(a)(12).