

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-51275; File No. SR-Amex-2005-002)

February 28, 2005

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment No. 1 Thereto Relating to the Member Firm Guarantee

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 January 4, 2005, the American Stock Exchange LLC (“Amex” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On February 15, 2005, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons. In addition, the Commission is granting accelerated approval of the proposed rule change, as amended.

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

The Exchange proposes to amend Commentary .02 to Amex Rules 950(d) and 950(d)— ANTE to change the current member firm guarantee for equity and index options traded on the Exchange. The text of the proposed rule change is available on the Exchange’s Web site (<http://www.amex.com>), at the Amex’s Office of the Secretary, and at the Commission’s Public Reference Room.

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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> See Form 19b-4 dated February 15, 2005 (“Amendment No. 1”). In Amendment No. 1, the Exchange made clarifications and technical corrections to the proposal and proposed rule text, which have been incorporated into this notice and order.

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

The purpose of the proposed rule change is to revise the current participation or member firm guarantee for equity and index options traded on the Exchange. The member firm guarantee provides that a floor broker is entitled to a participation guarantee of 20% if the order is traded at the best bid or offer ("BBO") or 40% if the order is traded at a price that improves the market, i.e., at a price between the BBO ("20/40 Rule"). Amex is proposing to amend Commentary .02 to Amex Rules 950(d) and 950(d)—ANTE to revise the current 20/40 Rule so that floor brokers receive 40% of an order (after public customer orders on the specialist's book or represented by a floor broker in the crowd have been filled) if such order trades at a price that matches or improves the market.

In April 2003,<sup>4</sup> the Exchange received permanent approval of the pilot program relating

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<sup>4</sup> See Securities Exchange Act Release No. 47643 (April 7, 2003), 68 FR 17970 (April 14, 2003) (approving File No. SR-Amex-2000-49).

to the member firm guarantee initially approved by the Commission on June 2, 2000.<sup>5</sup>

Commentary .02(d) to Amex Rules 950(d) and 950(d)—ANTE permits facilitation cross transactions in equity options and sets forth the member firm guarantee percentages.<sup>6</sup> The member firm guarantee was subsequently extended to index options in September 2004.<sup>7</sup> In this proposed rule change, the Exchange also proposes that the member firm guarantee in ANTE extend to index options.

Amex Rules 950(d) and 950(d)—ANTE provide, under certain conditions, the ability to cross a specified percentage of the customer order on behalf of a member firm before specialists and/or registered options traders in the crowd can participate in the transaction, i.e., the member firm guarantee. The provision generally applies to orders of 400 contracts or more; however, the Exchange is permitted to establish smaller eligible order sizes, on a class-by-class basis, provided that size is not for fewer than 50 contracts.

The amount of the guaranteed participation percentage depends upon a comparison of the original market quoted by the trading crowd in response to a request from the floor broker and the price at which the order is traded. If the order is traded at the best bid or offer provided by the trading crowd in response to the floor broker's initial request for a market, then the floor broker is entitled to cross 20% of the order. If the order is traded at a price that improves the market provided by the trading crowd in response to the floor broker's initial request for a

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<sup>5</sup> See Securities Exchange Act Release No. 42894 (June 2, 2000), 65 FR 36850 (June 12, 2000) (approving File No. SR-Amex-99-36).

<sup>6</sup> Facilitation cross transactions occur when a floor broker representing the order of a public customer of a member firm crosses that order with a contra side order from the firm's proprietary account.

<sup>7</sup> See Securities Exchange Act Release No. 50326 (September 7, 2004), 69 FR 55479 (September 14, 2004) (approving File No. SR-Amex-2004-51).

market, then the floor broker is entitled to cross 40% of the order. In addition, the facilitating member firm may only participate in the executed contracts after public customer orders on the specialist's book or represented by a floor broker in the crowd have been filled.

Under the proposal, floor brokers would be entitled to cross 40% of an order provided the order trades at a price that matches or improves upon the price given by the trading crowd in response to the floor broker's initial request for a market. All other requirements set forth in Commentary .02 to Amex Rules 950(d) and 950(d)—ANTE would remain the same. The Exchange proposes to amend Commentary .02(d) to Amex Rules 950(d) and 950(d)—ANTE by deleting the 20/40 Rule and specifying that a floor broker would be entitled to cross 40% of the contracts remaining after public customer orders on the specialist's book or represented in the trading crowd have been satisfied, provided the order trades at or between the best bid or offer given by the trading crowd in response to the broker's initial request for a market. The procedures for facilitating orders would remain the same with the only change being to the size of the member firm guarantee from 20% to 40%.

Current Commentary .02 (d) to Amex Rule 950(d) entitles the specialist to a participation entitlement of 20% of the original order size when the floor broker crosses its 20% at the trading crowd's price. If the floor broker improves upon the crowd's price and takes its 40%, the specialist is not entitled to any participation guarantee. The Exchange retains this limitation (i.e., that the percentage of the specialist's entitlement when combined with the amount of the order the floor broker crosses may not exceed 40%), recognizing that in most instances the effect of the proposed rule change would be that specialists are not entitled to participation guarantees (because the member firm typically would take its 40% guaranteed amount). The rule text has been revised to clearly indicate this limitation.

In order to remain competitive with other options exchanges, Amex believes that a change from the 20/40 Rule to a 40% member firm guarantee is necessary. In recent months both the Chicago Board Options Exchange, Inc. and the Pacific Exchange, Inc. have implemented a 40% member firm guarantee. In addition, the International Securities Exchange, Inc. (“ISE”) permits a 40% facilitation guarantee to its Electronic Access Members for those orders submitted through the ISE’s Facilitation Mechanism. Accordingly, the Exchange asserts that this proposal is required to remain competitive.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act,<sup>8</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>9</sup> in particular, in that it is 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 facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

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

The proposed rule change does not 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

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

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

<sup>9</sup> 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 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-2005-002 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-2005-002. 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 Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. 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 publicly available. All submissions should refer to File Number SR-Amex-2005-002 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

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

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>10</sup> Specifically, the Commission finds that the proposed rule change, as amended, is consistent with Section 6(b)(5) of the Act,<sup>11</sup> which requires, among other things, that an exchange's rules be designed 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. The Commission notes that the increase in the percentage that the floor broker is entitled to facilitate at the quoted market would not exceed 40% of an order. The Commission has found with respect to participation guarantees in other contexts that a maximum guarantee of 40% is not inconsistent with statutory standards of competition and free and open markets.<sup>12</sup>

The Commission finds good cause for approving this proposed rule change, as amended, prior to the thirtieth day after publication of notice thereof in the Federal Register, pursuant to

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

<sup>11</sup> 15 U.S.C. 78f(b)(5).

<sup>12</sup> 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.

Section 19(b)(2) of the Act.<sup>13</sup> The Commission believes that the proposed rule change is generally consistent with rules in place at other exchanges, and that acceleration of the proposed rule change, as amended, will permit the Exchange to implement the proposal in an expeditious manner and to compete with other exchanges that have similar rules without delay. The Commission, therefore, believes it is consistent with Sections 6(b)(5)<sup>14</sup> and 19(b)(2)<sup>15</sup> of the Act to approve the Amex's proposed rule change on an accelerated basis.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>16</sup> that the proposed rule change (SR-Amex-2005-002), as amended, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>17</sup>

Margaret H. McFarland  
Deputy Secretary

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<sup>13</sup> 15 U.S.C. 78s(b)(2).

<sup>14</sup> 15 U.S.C. 78f(b)(5).

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

<sup>16</sup> 15 U.S.C. 78s(b)(2).

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