

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-51285; File No. SR-Amex-2005-005)

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Procedures for Handling ITS Commitments in the Auto-Ex System

March 1, 2005

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 February 18, 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, II, and III below, which Items have been prepared by the Amex. The Exchange filed the proposal pursuant to Section 19(b)(3)(A) of the Act,<sup>3</sup> and Rule 19b-4(f)(1) 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 add a commentary to Rule 128A to clarify its Auto-Ex procedures for Portfolio Depository Receipts, Index Fund Shares, Trust Issued Receipts and National Market System Securities. The text of the proposed rule change is set forth below. Proposed new language is in *italics*.

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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)(1).

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**Rule 128A.**

**Automatic Execution**

(a) through (j) No change.

● ● ● Commentary -----

.01 An Intermarket Trading System (“ITS”) commitment shall be handled in the same manner as an order from the trading crowd in accordance with subsection (d)(i) of this Rule 128A, and, as a result, no contract for the execution of an ITS commitment shall be created, until the specialist begins to enter the acceptance of such ITS commitment into the order book.

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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

The purpose of this rule change is to clarify the treatment of ITS commitments with respect to the Auto-Ex system. The new Commentary provides for consistent treatment of all orders that are not Auto-Ex Eligible Orders. On June 25, 2004, the

Commission approved amendments to Amex Rule 128A,<sup>5</sup> which provides in paragraph (d)(i) that an order received from the “open outcry” auction market will not be deemed accepted until the specialist begins to enter the member’s acceptance into the order book. The purpose of paragraph (d)(i) is to provide a mechanism for avoiding double liability on the part of the specialist when the specialist has matched an order in the crowd against the Amex published quote (“APQ”) and an Auto-Ex Order executes against that quote before the specialist can begin to enter the previously accepted crowd order into the order book. Similarly, proposed Commentary .01 to Amex Rule 128A avoids double liability where an Auto-Ex Order takes an order on the book that establishes the APQ before the specialist begins to enter the acceptance of such ITS commitment into the order book. Pursuant to paragraph (j)(x) of Amex Rule 128A auto-execution will be unavailable during the period of time the specialist is in the process of executing the commitment.

The result of the Commentary would be to treat ITS commitments in the same manner as other on-floor orders. The Commentary will not otherwise change the rules of priority, parity and precedence and on-floor orders received after ITS commitments at the same price will yield priority to the ITS commitment.

## 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

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<sup>5</sup> See Securities Exchange Act Release No. 49921 (June 25, 2004), 69 FR 40690 (July 6, 2004) (SR-Amex-2004-04).

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

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

particular in that it is designed to prevent fraudulent and manipulative acts and practices and 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 mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest; and is designed to prohibit unfair discrimination between customers, issuers, brokers and dealers.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition.

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.

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

The proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>8</sup> and subparagraph (f)(1) of Rule 19b-4 thereunder<sup>9</sup> because it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule. 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

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

<sup>9</sup> 17 CFR 240.19b-4(f)(1).

the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of 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-2005-005 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-2005-005. 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 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-2005-005 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>10</sup>

Margaret H. McFarland  
Deputy Secretary

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<sup>10</sup> 17 CFR 200.30-3(a)(12).