

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-51812; File No. SR-Amex-2005-054)

June 9, 2005

Self-Regulatory Organizations; American Stock Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendments No. 1 and 2 Thereto Relating to Continuation of a Quote Assist Feature in Options on a Pilot Basis

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 May 18, 2005, the American Stock Exchange LLC (“Amex” or “Exchange”) submitted to 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 Amex. On May 31, 2005, the Amex filed Amendment No. 1 to the proposed rule change.³ On June 2, 2005, the Amex filed Amendment No. 2 to the proposed rule change.⁴ The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act⁵ which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, 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 950(g) to extend its pilot program implementing a quote-assist feature until April 30, 2006. The text of the proposed rule change is

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 made technical changes to the proposed rule text and made a clarifying change to Section III of the filing.

⁴ Amendment No. 2 made technical changes to the proposed rule text and to Exhibit 4 of the filing.

⁵ 15 U.S.C. 78s(b)(3)(A).

available on Amex's Web site (<http://www.amex.com>), at the Amex's principal office, and at the Commission's Public Reference Room.

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 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

Exchange Rule 958A(e) currently requires all option specialists to execute or display customer limit orders that improve the bid or offer by price or size immediately upon receipt, unless one of the exceptions set forth in the rule applies. "Immediately upon receipt" is defined in the rule "as soon as practicable which shall mean, under normal market conditions, no later than 30 seconds after receipt."⁶

In order to assist the specialists in complying with Amex Rule 958A(e) as described above, at the end of June 2004, the Exchange provided specialists with an automated quote assist feature as part of the Amex Options Display Book (also referred to as "AODB") on a pilot basis.⁷ The quote assist feature automatically displays eligible limit orders within a configurable time that can only be set on a floor-wide basis by the Exchange. While all customer limit orders are

⁶ See Securities Exchange Act Release No. 51062 (January 21, 2005), 70 FR 4163 (January 28, 2005).

⁷ See Securities Exchange Act Release No. 49797 (June 3, 2004), 69 FR 32637 (June 10, 2004).

expected to be displayed immediately, the quote assist feature can be set to automatically display limit orders at or close to the end of the 30-second time frame, or within any other shorter time frame established by the Exchange. In the event there are instances where the specialist has not yet addressed the order within the applicable 30-second period, the quote assist feature will automatically display the eligible customer limit order in the limit order book at or close to the end of that period. The quote assist feature helps to ensure that eligible customer limit orders are displayed within the required time period then in effect. Commentary .01 to Amex Rule 950 (g) requires the specialist to maintain and keep active the limit order quote assist feature. The Exchange has established the time frame within which the quote assist feature displays eligible customer limit orders, which time frame does not exceed the customer limit order display requirement set forth in Amex Rule 958A(e).

The Exchange now proposes to extend the quote assist feature on a pilot program basis until April 30, 2006, or until all products are trading on the ANTE System,⁸ whichever occurs first. There are currently only three option classes not yet trading on the ANTE System. These products, which are all index options, will be put on the ANTE System once issues relating to the System's quote calculation methodology for these products are corrected.

The Exchange notes that the quote assist feature does not relieve the specialists of their obligation to display customer limit orders immediately. To the extent that a specialist excessively relies on the quote assist feature to display eligible limit orders without attempting to address the orders immediately, the specialist could be violating Amex Rule 958A(e). However, brief or intermittent reliance on the quote assist feature by a specialist during an unexpected surge in trading activity in an option class would not violate Amex Rule 958A(e) if used when

⁸ See Securities Exchange Act Release No. 49747 (May 20, 2004), 69 FR 30344 (May 27, 2004).

the specialist is not physically able to address all the eligible limit orders within 30 seconds. The Exchange has issued a regulatory notice discussing the issue of excessive reliance on the quote assist feature.

The Exchange will continue to conduct surveillance to ensure that specialists comply with their obligation to execute or book all eligible limit orders within the time period prescribed by Exchange rules or policy. The Exchange commits to conducting surveillance designed to detect whether specialists, as a matter of course, rely on the quote-assist feature to display all eligible limit orders. A practice of excessive reliance upon the quote assist feature will be reviewed by Member Firm Regulation as a possible due diligence violation and/or a violation of Amex Rule 958A(e). The Exchange runs its limit order display exception report at various display intervals in an attempt to detect a pattern suggestive of undue reliance on the quote assist feature. The Exchange reports to the Commission every three months the statistical data it uses to determine whether there has been impermissible reliance on the quote assist feature by specialists.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act,⁹ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁰ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade. The quote assist feature provides a mechanism to ensure that eligible customer limit orders are displayed within the appropriate time frame.

⁹ 15 U.S.C. 78f.

¹⁰ 15 U.S.C. 78f(b)(5).

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

The Exchange does not believe that the proposed rule change will impose any inappropriate 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 either 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 been designated by the Amex as a “non-controversial” rule change pursuant to Section 19(b)(3)(A) of the Act¹¹ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹² 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, and the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five days prior to the filing date, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹³ and Rule 19b-4(f)(6) thereunder.¹⁴

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 Amex has requested that the Commission waive the 30-day operative delay

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(6).

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4(f)(6).

specified in Rule 19b-4(f)(6) so that the Amex may continue the quote assist pilot program for three products not yet trading on the ANTE System. The Exchange states that the proposed rule is substantially similar to comparable rules the Commission has approved for the Amex,¹⁵ the Chicago Board Options Exchange, Inc. (“CBOE”),¹⁶ and the New York Stock Exchange, Inc. (“NYSE”).¹⁷ Accordingly, the Amex believes that its proposal does not raise new regulatory issues, significantly affect the protection of investors or the public interest, or impose any significant burden on competition.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.¹⁸ The Commission believes that the Amex’s proposal raises no new issues or regulatory concerns that the Commission did not consider in approving the Amex, CBOE, and NYSE proposals.

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 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.¹⁹

¹⁵ See Securities Exchange Act Release No. 42952 (June 16, 2000), 65 FR 39210 (June 23, 2000).

¹⁶ See Securities Exchange Act Release No. 47701 (April 18, 2003), 68 FR 22426 (April 28, 2003).

¹⁷ See Securities Exchange Act Release No. 41386 (May 10, 1999), 64 FR 26809 (May 17, 1999)

¹⁸ 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).

¹⁹ For purposes of calculating the 60-day abrogation period, the Commission considers the proposal to have been filed on June 2, 2005, the date the Amex filed Amendment No. 2.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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. Please include File Number SR-Amex-2005-054 on the subject line.

Paper comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE, Washington, DC 20549-9303.

All submissions should refer to File Number SR-Amex-2005-054. 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-2005-054 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.²⁰

J. Lynn Taylor
Assistant Secretary

²⁰ 17 CFR 200.30-3(a)(12).