

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-52503; File No. SR-Amex-2005-066)

September 23, 2005

Self-Regulatory Organizations; American Stock Exchange LLC; Order Approving a Proposed Rule Change and Amendment No. 1 Thereto Relating to the Exchange's Determination of the National Best Bid or Offer When Another Exchange is Disconnected from the Intermarket Option Linkage

I. Introduction

On June 17, 2005, the American Stock Exchange LLC ("Amex"), filed with the Securities and Exchange Commission ("Commission") a proposed rule change 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> to amend Amex Rules 933(g) and 933(g)—ANTE regarding the determination of the National Best Bid or Offer ("NBBO") when another participant in the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage ("Linkage Plan")<sup>3</sup> is disconnected from the Linkage.<sup>4</sup> On August 4, 2005, the Amex filed Amendment No. 1 to the proposed rule change.<sup>5</sup> The

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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> On July 28, 2000, the Commission approved a national market system plan for the purpose of creating and operating an intermarket option linkage proposed by the Amex, the Chicago Board Options Exchange, Incorporated, and the International Securities Exchange, Inc. See Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000). Subsequently, upon separate requests by the Philadelphia Stock Exchange, Inc., the Pacific Exchange, Inc., and the Boston Stock Exchange, Inc., the Commission issued orders to permit these exchanges to participate in the Linkage Plan. See Securities Exchange Act Release Nos. 43573 (November 16, 2000), 65 FR 70851 (November 28, 2000); 43574 (November 16, 2000), 65 FR 70850 (November 28, 2000); and 49198 (February 5, 2004), 69 FR 7029 (February 12, 2004).

<sup>4</sup> See Amex Rule 940(b)(9).

<sup>5</sup> Amendment No. 1 superseded and replaced the original filing in its entirety.

proposed rule change, as amended, was published for comment in the Federal Register on August 23, 2005.<sup>6</sup> The Commission received one comment letter on the proposal.<sup>7</sup> This order approves the proposed rule change, as amended.

## II. Description of the Proposed Rule Change

The Amex proposes to amend Amex Rules 933(g) and 933(g)—ANTE to add a provision regarding the determination of the NBBO when another Participant Exchange<sup>8</sup> is disconnected from the Linkage. Amex Rules 933(g) and 933(g)—ANTE currently provide that a Floor Governor or Exchange Official may determine that certain quotes from another Participant Exchange are not reliable when such other Participant Exchange either (i) declares its quotes non-firm and directly communicates or disseminates a message through Options Price Reporting Authority (OPRA), or (ii) communicates to the Amex that such Participant Exchange is experiencing systems or other problems affecting the reliability of its disseminated quotes.

The Amex proposes to add to Amex Rules 933(g) and 933(g)—ANTE that when another Participant Exchange is disconnected from the Linkage and is not accepting Linkage orders, a Floor Governor or Exchange Official may determine the quotes from such Participant Exchange are unreliable and may exclude such quotes from the Amex's determination of the NBBO. The Amex believes that adding this third circumstance is necessary because there are times when due to system malfunctions, a Participant Exchange is disconnected from the Linkage but has not

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<sup>6</sup> See Securities Exchange Act Release No. 52270 (August 16, 2005), 70 FR 49335.

<sup>7</sup> See letter from Matthew Hinerfeld, Managing Director and Deputy General Counsel, Citadel Investment Group, L.L.C., on behalf of Citadel Derivatives Group LLC, to Jonathan G. Katz, Secretary, Commission, dated August 26, 2005.

<sup>8</sup> A "Participant Exchange" is a registered national securities exchange that is a party to the Linkage Plan. See Amex Rule 940(b)(14).

declared its quotes to be “non-firm” and has not informed the other exchanges that the disconnected Participant Exchange may have quote problems. As a result, access to the disconnected Participant Exchange is limited, and the Amex believes such Participant Exchange’s quotes should be excluded from the Amex’s determination of the NBBO.

### III. Comment Received

As noted above, the Commission received one comment letter on the proposal.<sup>9</sup> The commenter was strongly supportive of the Amex’s proposed rule change, including the Amex’s proposed method of determining that a Participant Exchange’s quote is unreliable.<sup>10</sup>

### IV. Discussion

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act<sup>11</sup> and the rules and regulations thereunder applicable to a national securities exchange.<sup>12</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>13</sup> which requires, among other things, that the rules of the Amex be designed to promote just and equitable

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<sup>9</sup> See supra note 7.

<sup>10</sup> The comment letter also addressed File No. SR-BSE-2005-30, a proposal to allow the Boston Options Exchange (“BOX”) to exclude a Participant Exchange’s quotes from BOX’s determination of the NBBO when, among other circumstances, such Participant Exchange is disconnected from Linkage. The commenter supported the Boston Stock Exchange, Inc.’s proposal, but suggested a modification to the proposal, as discussed in an order issued separately. See Securities Exchange Act Release No. 52501 (September 23, 2005). In addition, the commenter urged the Commission to address issues related to non-firm quotes that are outside the scope of these proposed rule changes.

<sup>11</sup> 15 U.S.C. 78f.

<sup>12</sup> In approving this proposal, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>13</sup> 15 U.S.C. 78f(b)(5).

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 believes that it is appropriate for the Amex to remove a Participant Exchange's disseminated quote(s) from the Amex's determination of the NBBO when such Participant Exchange is disconnected from Linkage and is not accepting Linkage orders because access to such Participant Exchange's quote(s) is limited during such times. The Commission further believes that the Amex's existing rules establish appropriate procedures to notify promptly the affected Participant Exchange and Amex member firms of such removal and establish an appropriate standard for determining when to resume inclusion of the affected Participant Exchange's quote(s) in the Amex's NBBO.<sup>14</sup>

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<sup>14</sup> See Amex Rules 933(g) and 933(g)—ANTE.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>15</sup> that the proposed rule change (SR-Amex-2005-066), as amended, is approved.

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

Jonathan G. Katz  
Secretary

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

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